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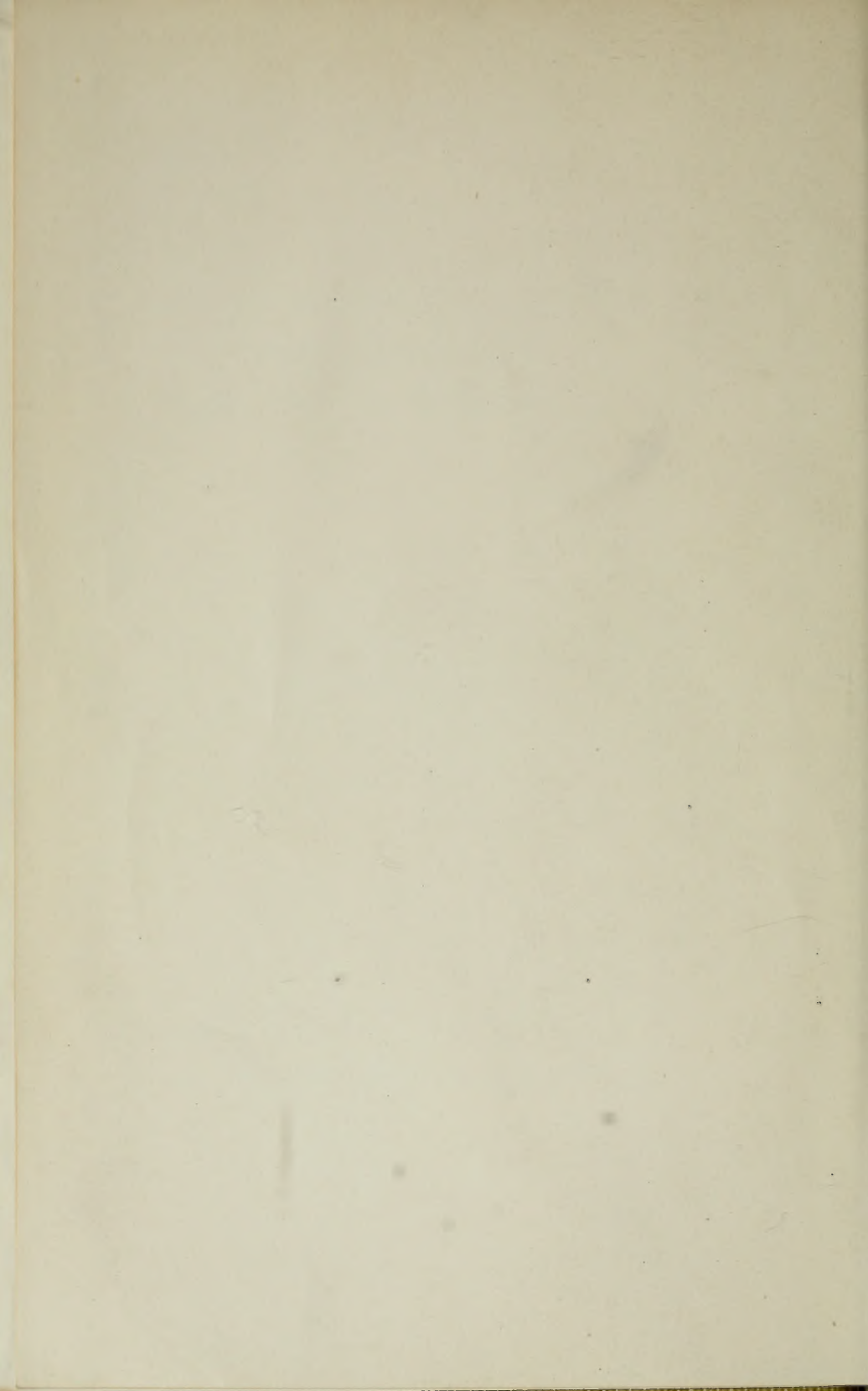
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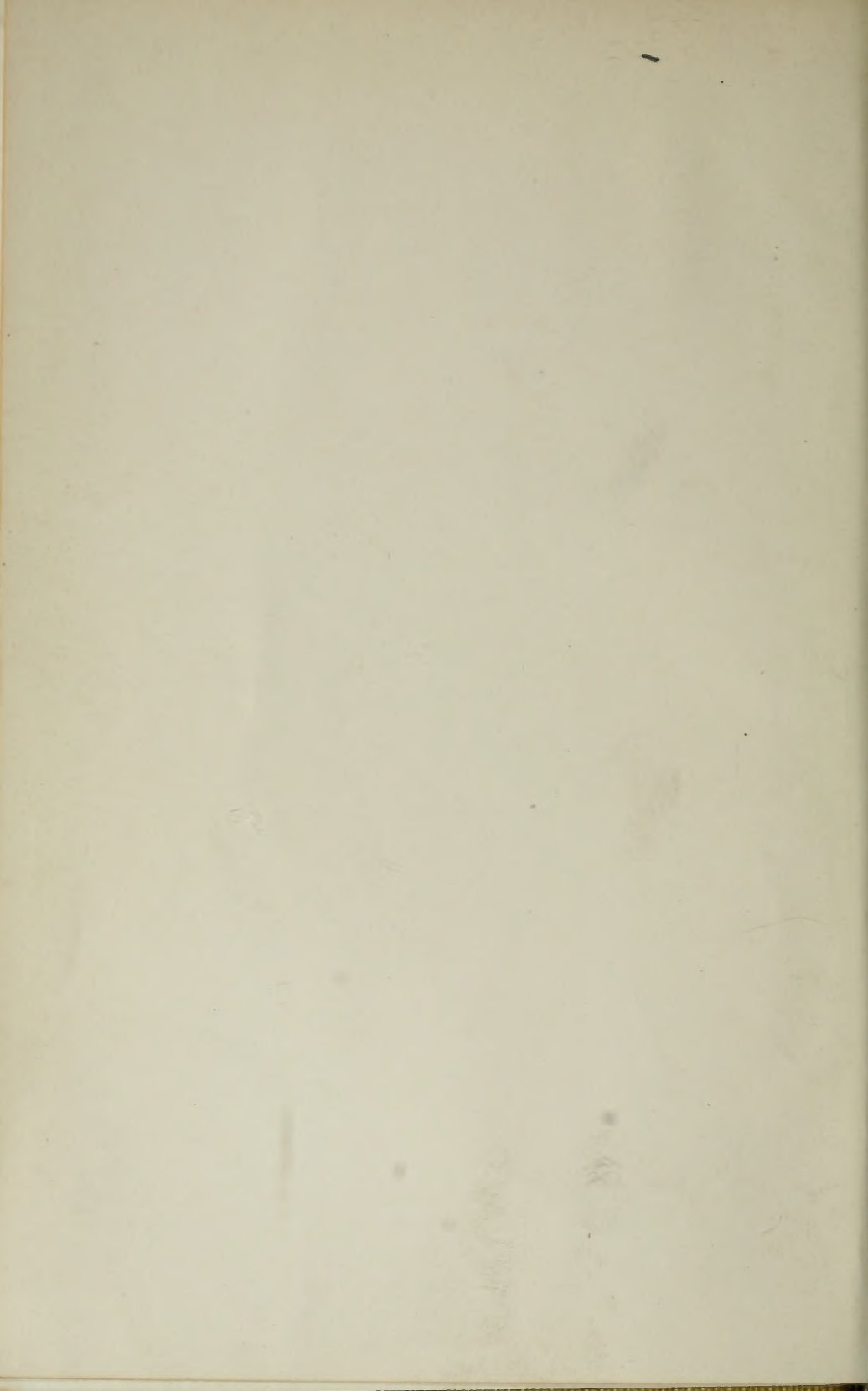
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817
816
No. 2335

IN THE
United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

*Upon Appeal from the United States District Court
for the Eastern District of Washington,
Northern Division.*

VOLUME I.
Pages 1 to 448 Inclusive

648

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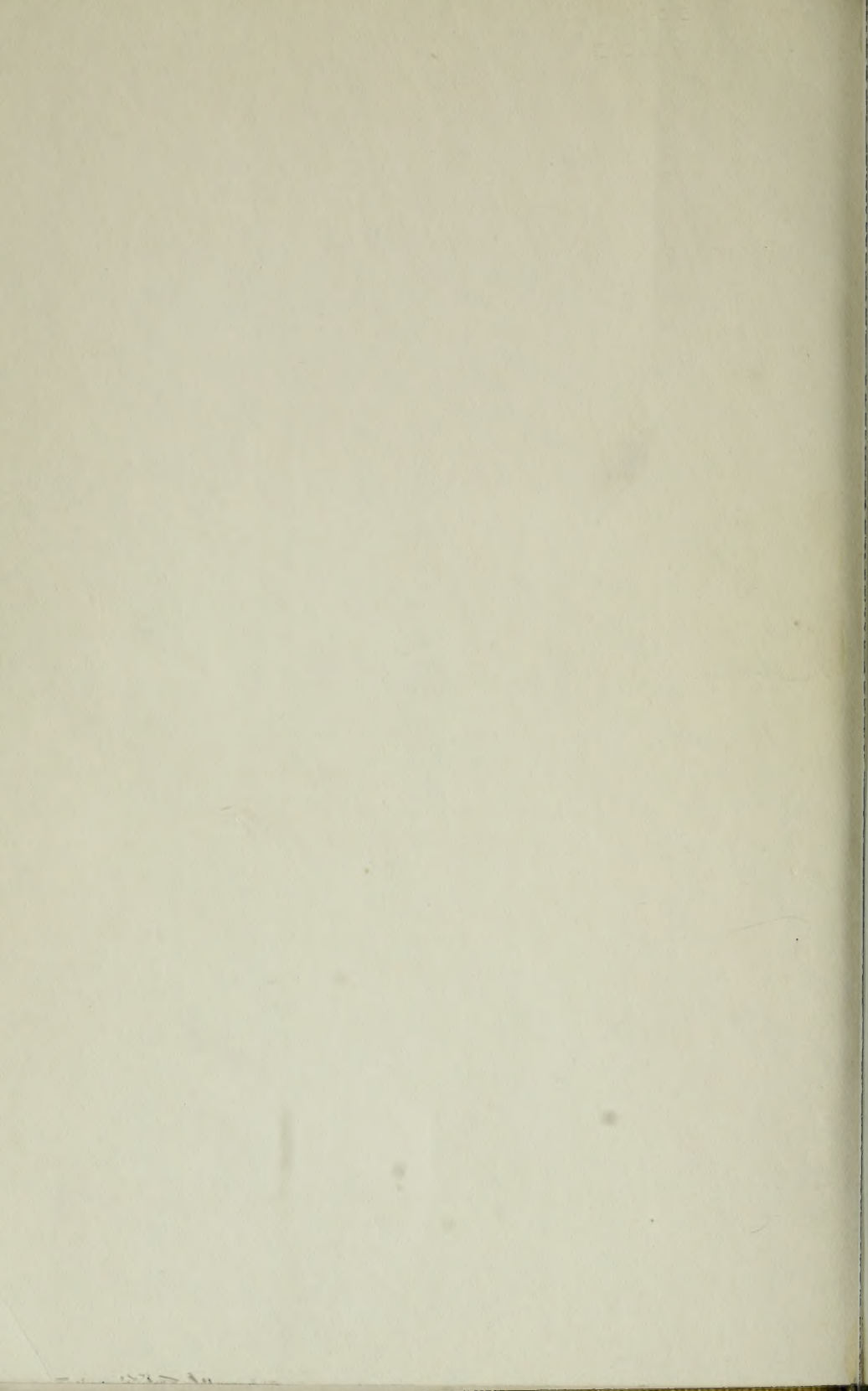
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CLERK

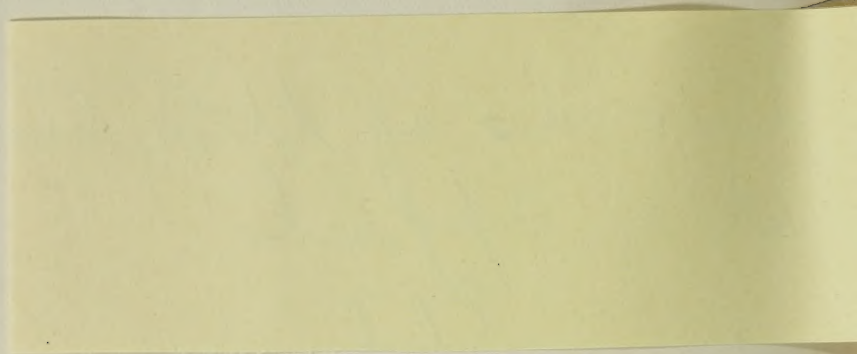
FILED

APR - 5 1913



Records of U.S Circuit
Court of appeals

F17



No.

IN THE
United States Circuit Court of Appeals
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MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record.

*Upon Appeal from the United States District Court
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VOLUME I.
Pages 1 to ~~448~~ Inclusive

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NAMES AND ADDRESSES OF SOLICITORS OF
RECORD.

A. G. ELSTON, Peyton Building, Spokane, Wash-
ington,

Solicitor for Appellant.

OSCAR CAIN, United States District Attorney, Federal
Building, Spokane, Washington,

and

EDMUND J. FARLEY, Assistant United States Dis-
trict Attorney, Federal Building, Spokane, Wash-
ington,

Solicitors for Appellee.

*In the Circuit Court of the United States for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,

MENT COMPANY, a corporation,

Defendant.

STIPULATION.

It is hereby stipulated and agreed, by and between E. C. Macdonald, Assistant United States District Attorney, on behalf of the United States, and A. G. Elston on behalf of the Multnomah Mining, Milling and Development Company, Ltd., that the time in which the clerk of the United States Circuit Court, at Spokane, Washington, is required by law to transmit the records in the case of the United States of America vs. Multnomah Mining, Milling and Development Company, Ltd., on appeal to the United States Circuit Court at San Francisco, be and the same is hereby with the consent of the Judge of the United States Court at Spokane, Washington, extended for a period of sixty (60 days from the expiration of the time allowed by law.

(Signed) E. C. MACDONALD,

Assistant U. S. District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Mult-
nomah Mining, Milling and Develop-
ment Company, Ltd.

Approved:

October 27, 1911.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Stipulation extending time for printing record.

Filed Oct. 27, 1911.

FRANK C. NASH, Clerk.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY,
MENT COMPANY, a corporation,

Defendant.

STIPULATION.

In the matter of the above entitled case, it is hereby stipulated, by and between E. C. Macdonald, Assistant United States District Attorney, for and on behalf of the United States, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, that the clerk in making up a transcript of the record, on appeal taken in said case, may cause the same to be printed in the City of Spokane, State of Washington, and that the time for forwarding citation and record may be extended by and with the approval of the judge of the above entitled court, for a further period of ninety (90) days from the expiration of the time heretofore covered by stipulation.

Dated this 2nd day of January, 1912.

(Signed) E. C. MACDONALD,
Assistant U. S. District Attorney.

(Signed) A. G. ELSTON,
Solicitor and Counselor of the Multnomah Mining, Milling and Development Company.

Approved:

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Stipulation extending time for printing record.
Filed January 2nd, 1912.

W. H. HARE, Clerk.

By F. C. NASH, Deputy.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

It is hereby stipulated, by and between, Oscar Cain, United States District Attorney, for the Eastern District of Washington, Northern Division, for and on behalf of the United States of America, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, defendant, that the time in which the defendant company is allowed by law in which to cause a transcript of the record to

be printed, may be and the same is hereby extended up to and including the 10th day of August, A. D. 1912.

(Signed) OSCAR CAIN,

United States District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Multnomah Mining, Milling and Development Company.

Dated this 1st day of April, 1912.

Endorsements:

Stipulation extending time for printing record to 10th day of August

Filed April 1st, 1912.

W. H. HARE, Clerk.

By FRANK C. NASH, Deputy.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

STIPULATION.

It is hereby stipulated, by and between, Oscar Cain, United States District Attorney, for the Eastern District of Washington, Northern Division, for and on behalf of the United States of America, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, defendant, that the

time in which the defendant company is allowed by law in which to cause a transcript of the record to be printed, may be and the same is hereby extended up to and including the 30th day of October, A. D. 1912.

(Signed) OSCAR CAIN,

United States District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Multnomah Mining, Milling and Development Company.

Dated this 9th day of September, 1912.

Approved:

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Stipulation extending time for printing record to Oct. 30, 1912.

Filed September 9, 1912.

W. H. HARE, Clerk.

By FRANK C. NASH, Deputy.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

STIPULATION.

It is hereby stipulated, by and between, Oscar Cain, United States District Attorney, for the Eastern Dis-

trict of Washington, Northern Division, for and on behalf of the United States of America, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, defendant, that the time in which the defendant company is allowed by law in which to cause a transcript of the record to be printed, may be and the same is hereby extended up to and including the 31st day of December, A. D. 1912.

(Signed) OSCAR CAIN,

United States District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Multnomah Mining, Milling and Development Company.

Approved:

(Signed) FRANK H. RUDKIN, Judge.

Dated this 30th day of October, 1912.

Endorsements:

Stipulation extending time for printing record to Dec. 31, 1912.

Filed Dec. 6, 1912.

W. H. HARE, Clerk.

By FRANK C. NASH, Deputy.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOPMENT COMPANY, a corporation,

Defendant.

STIPULATION.

It is hereby stipulated, by and between, Oscar Cain, United States District Attorney, for the Eastern District of Washington, Northern Division, for and on behalf of the United States of America, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, defendant, that the time in which the defendant company is allowed by law in which to cause a transcript of the records to be printed, may be and the same is hereby extended up to and including the 30th day of January, A. D. 1913.

(Signed) . OSCAR CAIN,

United States District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Multnomah Mining, Milling and Development Company.

Approved:

(Signed) FRANK H. RUDKIN, Judge.

Dated this 30th day of December, 1912.

Endorsements:

Stipulation extending time for printing record to January 30, 1913.

Filed Dec. 30, 1912.

W. H. HARE, Clerk.

By FRANK C. NASH, Deputy.

*In the District Court of the United States for the Eastern
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

No. 1317.

STIPULATION.

It is hereby stipulated, by and between, Oscar Cain, United States District Attorney, for the Eastern District of Washington, Northern Division, for and on behalf of the United States of America, and A. G. Elston, solicitor and counselor for the Multnomah Mining, Milling and Development Company, defendant, that the time in which the defendant company is allowed by law in which to cause a transcript of the records to be printed, may be and the same is hereby extended up to and including the 15th day of March, 1913.

(Signed) OSCAR CAIN,

United States District Attorney.

(Signed) A. G. ELSTON,

Solicitor and Counselor of the Mult-
nomah Mining, Milling and Develop-
ment Company.

Dated this 23rd day of January, 1913.

Approved:

(Signed) FRANK H. RUDKIN, Judge.

Endorsements:

Stipulation extending time for printing record to March 15, 1913.

Filed January 25, 1913.

W. H. HARE, Clerk.

By FRANK C. NASH, Deputy.

*In the Circuit Court of the United States for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

No. 1317.

COMPLAINT.

The United States of America, by Charles J. Bonaparte, its Attorney General; A. G. Avery, United States Attorney, and J. B. Lindsley, Assistant United States Attorney, brings this its bill against the Multnomah Mining, Milling and Development Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its principal place of business at the City of Spokane, in the Eastern District of Washington, and an inhabitant of said District, defendant, and thereupon complains and says:

FIRST:

That on or about the 10th day of July, 1902, and at all times for many years prior thereto, the complainant was the owner and entitled to the immediate and exclusive possession of the following described land and all

of the right, title, interest and estate therein, situate in the Moses Mining District, Okanogan County, Washington, at the point where the Nespelem River joins the Columbia River, and further described as follows, to-wit:

Beginning at corner No. 1, identical with corner No. 1 of the location. A pine post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ inches square, set 2 feet in the ground, with mound of earth, scribed 1-680 U. S. L. M., No. 1, Moses Mining District; bears south 26 degrees 4' east 115.95 feet. Thence N. 73 degrees 43' W. V. 22 degrees 15' E. 1736. To cor. No. 2. A cottonwood post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ inches square. Thence N. 59 degrees 46' W. 3572. To cor. No. 3. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence S. 48 degrees 30' W. 1782.5. To cor. No. 4. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence S. 85 degrees .03' E. 291.2. To cor. No. 5. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence S. 6 degrees 42' E. 150. Intersect North Bank Nespelem river 1000. Intersect South Bank Nespelem river 1007.0. To cor. No. 6. A fir post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence N. 88 degrees 34' E. 2678. To cor. No. 7. A cedar post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. The Northwest corner of Eliza Ricard's fence, bears S. 75 degrees west 2.5 feet. Thence S. 75 degrees 43' E. 2687.8. To corner No. 8. A post $4\frac{1}{2}$ feet long, $4\frac{1}{2}$ in. sqr. Thence N. 37 degrees 35' E. 470. Intersect South Bank of Nespelem river 510. Intersect North Bank Nespelem river 652.7. To cor. No. 1 and place of beginning, containing 157.173 acres. The name of the adjoining claims are the Wickman Placer on the north and west, and an unknown lode claim on the east.

SECOND:

That on or about said 10th day of July, 1902, the defendant herein filed for record in the office of the Auditor for Okanogan County, Washington, where said lands and premises were situated, a purported notice of the location of said above described lands and premises as a gold placer mineral claim, designating the same as the "Peabody Placer" mining claim.

THIRD:

That thereafter, and on or about the 26th day of November, 1902, the said defendant made and filed in the local Land Office of the United States, at Waterville, Washington, its application for patent from the United States to it for said alleged mineral claim as provided in Chapter VI, Title 32, of the Revised Statutes of the United States, and in accordance with the official survey thereof, in connection therewith, which survey was a part of said application, and all of which acts and doings were in form in accordance with the procedure under the law and Rules and Regulations of the General Land Office in the matter of securing a patent for placer mining claims from the United States.

FOURTH:

That said application was made, signed and sworn to by one, Dr. F. O. Hudnutt, who was then and there the general manager of the defendant corporation and who was by it duly and regularly authorized to make said application on its behalf. That in said application, among other things, said defendant, by its said manager, under oath stated and averred that said mineral claim contained and bore gold. That annexed to and

with said notice of location filed as aforesaid with the Auditor of said Okanogan County, and as a part thereof, there was annexed the affidavit of one T. B. Early, an agent of said defendant, wherein and whereby said Early, for and on behalf of said defendant and at its instance and request, duly made oath and declared that he had discovered a deposit of gold within the boundaries of said alleged mineral claim; that said notice and affidavit were by said defendant, on or about the 26th day of November, 1902, presented to, and filed with, said local Land Office in connection with and as a part of said application for a patent and in aid thereof. That on or about the 24th day of August, 1904, in support of said application for a patent for said alleged mineral claim as aforesaid, and to comply with the requirements of the General Land Office, and to prove to and satisfy said Land Office that it, the said defendant, was entitled to a patent for said alleged mineral claim, the defendant filed in said local Land Office the affidavit of one C. M. Hinman, wherein said Hinman declared and made oath that said claim contained deposits of gold. That on or about August 24th, 1904, in support of said application for a patent for said alleged mineral claim as aforesaid, and to comply with the Rules and Regulations of said General Land Office and as proof and evidence therein that said defendant was entitled to a patent for said alleged mineral claim, the defendant filed in said Land Office the affidavit of one, Dr. F. O. Hudnutt, in form, duly made on the 17th day of August, 1904, wherein said Hudnutt did declare and make oath that said alleged mineral claim contained de-

posits of gold. That on or about the date last aforesaid, in support of said application for a patent for said alleged mineral claim and to comply with the Rules of said General Land Office in the matter of proof and evidence that the defendant was entitled to a patent for said alleged mineral claim, the defendant filed in said Land Office the affidavit of said T. B. Early, in due form, duly made on the 8th day of August, 1904, wherein said Early did make oath and declare that the said alleged mineral claim contained deposits of gold.

FIFTH:

That the said affidavits, and each and every of them, so presented and filed with said local Land Office as aforesaid, as evidence and proof to aid and sustain said application for a patent for said alleged mineral claim, are and were false and fraudulent in this, that said alleged mineral claim did not, at the time any of said affidavits were made, or at any other time, contain a deposit of, or any, gold, all of which was by the respective persons making said affidavits and defendant well known at the time when said affidavits, and each of them, were made, and at all times herein mentioned, including the time when they were presented and filed in the said local and General Land Office in support and aid of said application for a patent. That the making and filing of said application for a patent for said alleged mineral claim was, and is, a false and fraudulent scheme entered into by and between said defendant and the persons making said affidavits for the purpose of wrongfully and fraudulently securing from the complainant for the defendant the lands and premises above

described herein, and for the purpose of deceiving said local and General Land Office and the officers thereof and to cause them to believe, hold and decide that said alleged mineral claim contained deposits of gold and was subject to entry and purchase under the laws of the United States governing the acquisition of gold placer mining claims by bona fide locators thereon and applicants therefor.

SIXTH:

That relying upon said false and fraudulent application and affidavits and statements therein, and said testimony and evidence so made and filed as to said alleged mineral claim containing deposits of gold, and believing therefrom that said alleged mineral claim did in fact contain deposits of gold and that said affidavits were true and that said application was bona fide and made in good faith, the Register of said local Land Office received from said defendant the sum of Three Hundred and Ninety-five Dollars (\$395.00), allowed said entry and application and issued to the defendant a final certificate of entry covering said alleged mineral claim, and the complainant, on or about the 31st day of October, 1904, relying on said false and fraudulent affidavits and statements therein and said testimony and evidence so made and filed as to the alleged mineral claim containing deposits of gold as aforesaid, all of which was transmitted to it by and through its General Land Office, and believing therefrom that said alleged mineral claim did in fact contain deposits of gold, and that said affidavits were true, and that they and said application were made in good faith, did cause to be

executed and issued by and through its proper officers to said defendant, in the usual form, a patent for said alleged mineral claim.

SEVENTH:

That said defendant now, and at all times since the said 10th day of July, 1902, has claimed to be the owner and entitled to the possession of said lands and premises, but that at the time of the filing of said notice of location of said alleged mineral claim, and at all times since, including the time when said application for a patent was made as aforesaid, the said defendant knew of the false and fraudulent acts of the persons who made the affidavits hereinbefore described, and each of them, and of its own false and fraudulent acts above described, and knew that all of said acts were done and performed for the purpose of fraudulently acquiring said lands and premises and to the end that the complainant should be deprived of the same in the manner hereinbefore averred and without just and proper consideration, all of which acts and doings by said defendant were and are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of this complainant.

11.

The United States of America, by Charles J. Bonaparte, its Attorney General, A. G. Avery, United States Attorney, and J. B. Lindsley, Assistant United States Attorney, brings this its bill against the Multnomah Mining, Milling and Development Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its prin-

incipal place of business at the City of Spokane, in the Eastern District of Washington, and an inhabitant of said District, defendant, and thereupon for its second cause of action, complains and says:

FIRST:

That on or about the 14th day of June, 1902, and at all times for many years prior thereto, complainant was the owner of the following described land, and all of the right, title, interest and estate therein, situate in the Moses Mining District, Okanogan County, Washington, at the point where the Nespelem River joins the Columbia River, and further described as follows, to-wit:

Beginning at Corner No. 1, identical with cor. No. 2, Peabody Placer survey No. 680. Multnomah Mining, Milling & Development Company, claimant. A cottonwood post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ feet above ground, with mound of earth scribed 1-686 in addition to the original markings, U. S. L. M., No. 1, Moses Mining District, bears S. 71 degrees 30' E. 1816 feet. No bearing objects available. S. E. Loc. cor. identical with corner No. 1. Survey No. 680 and corner No. 2 survey No. 680. A post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ feet above ground, set in mound of earth N. E. Loc. cor. No. 1 bears N. 26 E. 392 feet. Thence N. 50 5' w. Var. $22\frac{1}{4}$ e. 6481.08. To cor. No. 2. A granite stone 6"-9"-24' long set 12 inches in the ground, chiseled 2-686. Thence S. 44 48' w. 600. To cor. No. 3. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{2}$ feet long, set 2 feet in the ground, scribed 3-686. Thence S. 30 58' E. 3028.71. To cor. No. 4 on line 3-4 survey No. 680 at N. 48 30' E. 782.5 feet from cor. No. 4. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{2}$ feet long, set 2 feet in the ground.

Thence N. 48 30' E. Along line 4-3 survey No. 680, Peabody Placer, 1000. To cor. No. 5. Identical with cor. No. 3, survey No. 680. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{2}$ feet long, set in the ground with mound of earth, scribed 5-686. Thence S. 59 46' E. Along line 3-2, survey No. 680. 2050. Intersect ditch 4 feet wide. Course N. 50' W., 3572. To cor. number 1 and place of beginning, containing 99.540 acres. The name of the adjoining claim is the Peabody Placer, Survey No. 680, on the South. This claim is located about three miles south of the Nespelem post-office, Okanogan County, Washington. Adjoining claim is the Peabody Placer on the South.

SECOND:

That thereafter, and on or about the 3rd day of July, 1902, T. B. Early, Dr. F. O. Hudnutt, G. S. Wickman, L. C. Feighner and C. L. Bussey, filed for record in the office of the Auditor of Okanogan County, Washington, where said lands and premises were situated, a purported notice of the location of the same as a gold placer mineral claim designated as the Wickman Placer mineral claim; that thereafter, the defendant having acquired the rights of said last named persons in and to said lands and premises, did, on or about the 26th day of November, 1902, make and file in the Land Office of the United States, at Waterville, Washington, its application for a patent from the United States to it of the said alleged Wickman Placer mineral claim under Chapter VI, Title 32 of the Revised Statutes of the United States, and in accordance with the official survey and description thereof in connection therewith, which

was filed as a part of said application, all of which was in due form and in accordance with the rules and regulations of the General Land Office of the United States governing the application for a patent for gold placer mineral claims.

THIRD:

That said application was made, signed and sworn to by one, Dr. F. O. Hudnutt, who was then and there the general manager of the defendant corporation and who was by it duly authorized and empowered to make said application on its behalf; that in said application, among other things, said defendant, by its said manager, under oath did state and declare that said alleged mineral claim contained a deposit of and bore gold; that on or about the 24th day of August, 1904, in support of said application for a patent for said alleged mineral claim as aforesaid, and to comply with the Rules, Regulations and Requirements of said General Land Office in the matter of establishing the fact that said alleged mineral claim contained and bore gold, the defendant filed in said local Land Office the affidavit of one T. B. Early, regularly made on the 18th day of August, 1904, wherein said Early did declare and make oath that said alleged mineral claim contained and bore gold; that on or about the 24th day of August, 1904, in support of said application for a patent as aforesaid and to comply with the Rules and Regulations of said General Land Office in the matter of adducing evidence to show that said alleged mineral claim contained gold, the defendant filed in said local Land Office the affidavit

of said Dr. F. O. Hudnutt in due form, duly made on August 17th, 1904, wherein said Hudnutt did declare and make oath that said claim contained gold; that on or about the 24th day of August, 1904, in support of said application for a patent theretofore made by the defendant for said alleged mineral claim and to comply with the Rules and Regulations of said General Land Office in the matter of adducing evidence to prove that said claim contained gold, the defendant filed in the said local Land Office the affidavit of one C. M. Hinman, wherein said Hinman did make oath and declare that said alleged mineral claim contained a deposit of gold.

FOURTH:

That the aforesaid affidavits and each and every of them so presented and filed in said local Land Office as evidence and proof to aid and sustain said application for a patent for said alleged mineral claim, were and are false and fraudulent in this, that said alleged mineral claim did not at the time said affidavits, or any of them, were made, or at any other time, contain deposits of, or any, gold, all of which was by the respective persons making said affidavits and defendant well known at the time when said affidavits, and each of them, were made, and at all times herein mentioned, including the time when they were presented and filed in said local Land Office and General Land Office in support and in aid of said application for a patent. That the making and filing of said application for a patent for said alleged mineral claim was a false and fraudulent scheme entered into by and between said defendant and the persons making said affidavits for the purpose of wrong-

fully and fraudulently securing from the complainant for the defendant the lands and premises above described herein, and for the purpose of deceiving said local and General Land Office and the officers thereof, and to cause them to believe, hold and decide that said alleged mineral claim contained deposits of gold and was subject to entry and purchase under the laws of the United States governing the acquisition of gold placer mining claims by bona fide locators thereon and applicants therefor.

FIFTH:

That relying on the statements and averments in said application and said affidavits that said alleged mineral claim contained deposits of gold and that the location of said mineral claim and said application for a patent were honestly made and that the efforts, evidence and proof of said defendant submitted to the local and General Land Office was submitted in a bona fide effort to secure said mineral claim and a patent therefor in a lawful manner, the Register of said Local Land Office, at Waterville aforesaid, received from said defendant the sum of Two Hundred and Fifty Dollars (\$250.00), allowed said entry and application and issued to the defendant a final certificate of entry covering said mineral claim, and the complainant, on or about the 31st day of October, 1904, relying on said false and fraudulent application, affidavits and statements therein and said testimony and evidence so made and filed as to the alleged mineral claim containing deposits of gold as aforesaid, and which was transmitted by it by and through its General Land Office, and believing therefrom

that said alleged mineral claim did in fact contain deposits of gold, and that said affidavits and application and the statements and averments therein were true and that they were made in good faith, did cause to be executed and issued by and through its proper officers to said defendant, in the usual form, a patent for said alleged mineral claim.

SIXTH:

That said defendant now, and at all times since said 14th day of June, 1902, has claimed to be the owner and entitled to the possession of said lands and premises, but that at the time of the filing of said notice of location of said alleged mineral claim, and at all times since, including the time when said application for a patent therefor was made as aforesaid, the said defendant knew of the false and fraudulent acts of the persons who made the affidavits herein described, and each of them, and of its own false and fraudulent acts above described, and knew that all of said acts were done and performed for the purpose of fraudulently acquiring said lands and premises and to the end that the complainant should be deprived of the same in the manner hereinbefore averred and without just and proper consideration, all of which acts and doings by said defendant were and are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of this complainant.

FORASMUCH, THEREFORE, as the complainant has been so as above cheated and defrauded of its valuable lands and premises and as remediless at and by the strict rules of the common law and as only relievable

in a Court of Equity wherein such matters are fully cognizable and relievable; and to the end that said Multnomah Mining, Milling and Development Company may full, true, direct and certain answer make according to the best of its knowledge and belief, to all and singular the matters and charges aforesaid, but not under oath (its answer under oath being hereby expressly waived), complainant prays as follows:

That said Multnomah Mining, Milling and Development Company may be held, adjudged and decreed to have defrauded complainant of said lands and premises, and each and every description thereof hereinbefore set forth as patented by complainant to the said defendant; and that by reason of such fraud, the patent issued as aforesaid be declared void, and, as such, held for naught and set aside, and that said lands and premises be restored to the public domain of the complainant; that the complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and as may seem proper to this Honorable Court, and that it have judgment against said defendant for its costs and disbursements herein incurred. May it please your Honors to grant unto complainant a writ of subpoena, issued out of and under the seal of this Honorable Court to be directed to said Multnomah Mining, Milling and Development Company, commanding it by a day certain and under a penalty therein to be inserted, to be and appear before this Honorable Court and then and there answer the premises and further stand to and to abide such orders and decree therein as shall be agreeable to equity and good conscience.

And complainant will ever pray.

(Signed) CHARLES J. BONAPARTE,
Attorney General.

(Signed) A. G. AVERY,
United States Attorney.

(Signed) J. B. LINDSLEY,
Asst. U. S. Attorney.

UNITED STATES OF AMERICA,
Eastern District of Washington—ss.

Comes now A. G. AVERY, Attorney for the United States, and says that he has read the foregoing Bill of Complaint and believes the facts stated therein to be true.

(Signed) A. G. AVERY.

Subscribed and sworn to before me this 11th day of March, 1908.

(Signed) THOMAS B. HIGGINS,
Notary Public in and for the State of Wash-
ington, residing at Spokane, Washington.

Endorsements: BILL OF COMPLAINT.

Filed in the U. S. Circuit Court for the Eastern Dis-
trict of Washington, March 11th, 1908.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

ANSWER.

Now comes the Multnomah Mining, Milling and Development Company, a corporation, defendant in the above entitled cause of action, and for answer to the complaint of the complainant herein,

First: Admits that on or about the 10th day of July, 1901, and at all times for many years prior thereto, the complainant, the United States of America, was the owner and entitled to the immediate and exclusive possession of the land described in paragraph 1 of the complaint herein, and was entitled to all of the right, title, interest and estate therein; said land being situate in Moses Mining District, Okanogan County, Washington, at a point where the Nespelem River joins the Columbia River, and further described as set forth in paragraph 1 of the complaint herein.

Second: Admits that on or about the 10th day of July, 1901, the defendant herein filed for record in the office of the auditor of Okanogan County, Washington, where said lands and premises were situated, a notice of the location of said lands and premises as set forth in paragraph 1 of the complaint herein, as a gold placer mineral claim, and admits that the same was designated as the "Peabody Placer mining claim."

Third: Admits that on or about the 26th day of November, 1902, as alleged in paragraph 3 of the complaint herein, the defendant made and filed in the local land office of the United States at Waterville, Washington, its application for patent from the United States to it for said mineral claim, as provided in Chapter VI,

Title 32 of the Revised Statutes of the United States, and in accordance with the official survey thereof in connection therewith, and which survey is a part of said application; and admits that all of such acts and doings were in form in accordance with the procedure under the law, rules and regulations of the General Land Office in the matter of securing a patent for placer mining claims from the United States, as alleged in paragraph 3 of the complaint herein.

Fourth: Admits that said application was made, signed and sworn to by one Dr. F. O. Hudnutt; admits that said Hudnutt was then the general manager of the defendant corporation, and that he was duly and regularly authorized to make said application on its behalf; admits that in said application said Hudnutt under oath stated that said mineral claim bore gold; as to whether annexed to said notice of location filed as aforesaid with the auditor of said Okanogan County, and as a part thereof, there was annexed the affidavit of one T. B. Early, an agent of said defendant, wherein and whereby said Early for and on behalf of said defendant and at its instance and request, duly made oath and declared that he had discovered a deposit of gold within the boundaries of said alleged mineral claim, this defendant has not sufficient knowledge upon which to base a belief, and therefore denies the same; and for the same reason denies that said notice and affidavit were by said defendant on or about the 26th day of November, 1902, presented to and filed with said local land office in connection with and as a part of said application for patent and in aid thereof; and for the same reason denies that on or about

the 24th day of August, 1904, in support of said application for patent for said alleged mineral claim as aforesaid, and to comply with the requirements of the General Land Office, and to prove to and satisfy said Land Office that it, the said defendant, was entitled to patent for said alleged mineral claim, that defendant filed in said local land office the affidavit of one C. M. Hinman, wherein said Hinman declared and made oath that said claim contained a deposit of gold; and for the same reason denies that on or about August 24th, 1904, in support of said application for patent for said alleged mineral claim as aforesaid, and to comply with the rules and regulations of said general land office, and as proof and evidence therein, that said defendant was entitled to a patent for said alleged mineral claim, the defendant filed in said land office the affidavit of one Dr. F. O. Hudnutt, in form duly made on the 17th day of August, 1904, wherein said Hinman did declare and make oath that said alleged mineral claim contained deposits of gold as alleged in paragraph 4 of the complaint; and for the same reason denies that on or about the date last aforesaid, in support of said application for a patent for said alleged mineral claim, and to comply with the rules of said general land office in the matter of proof and evidence that the defendant was entitled to a patent for said mineral claim, the defendant filed in said land office the affidavit of said T. B. Early in due form duly made on the 8th day of August, 1904, wherein said Early did make oath and declare that the said alleged mineral claim contained deposits of gold, as alleged in paragraph 4 of the complaint herein.

Fifth: Denies that the said affidavits and each and every of them so presented and filed with said local land office as evidence and proof to aid and sustain said application for patent for said alleged mineral claim are and were false and fraudulent in this, that said alleged mineral claim did not at the time any of said affidavits were made, or at any other time, contain a deposit of or any gold; denies that any of said affidavits were false and fraudulent in such respect. Denies that the falsity and fraudulent character of any of such affidavits were known by any of the respective persons making said affidavits; denies that the defendant well knew at the time when said affidavits and each of them were made, or at any time whatsoever, that said affidavits were false or fraudulent. Denies that the defendant or its agents and officers at any time knew that said affidavits or any of them were untrue, false or fraudulent. Alleges, moreover, that each and all of the affidavits made by the defendant, its agents or officers herein in pursuance of said application for patent of said Peabody placer, were true, and made in good faith. Denies that the making and filing of said application for a patent for said alleged mineral claim was and is a false and fraudulent scheme entered into by and between said defendant and the persons making said affidavits, for the purpose of wrongfully and fraudulently securing from the complainant for the defendant, and lands and premises above described, and denies that said application was for the purpose of deceiving said local and general land offices and the officers thereof, and to cause them to believe, hold and decide that said alleged

mineral claim contained deposits of gold and was subject to entry and purchase under the laws of the United States governing the acquisition of gold placer mining claims by bona fide locators thereon and applicants therefor; but this defendant alleges, moreover, that such application and all affidavits made in support thereof were true and made in good faith.

Sixth: Admits that the complainant herein relying upon the claim of the defendant herein, and upon the affidavits and statements made by the defendant, its officers and agents, in pursuance of the application set forth, and believing therefrom that said alleged mineral claim did in fact contain deposits of gold, and believing that said affidavits were true and that said application was bona fide and made in good faith, the Register of said local land office received from said defendant the sum of \$395.00, allowed said entry and application, and issued to the defendant a final certificate of entry covering said alleged mineral claim; and admits that the complainant, on or about the 31st day of October, 1904, relying upon said affidavits and statements of said defendant, its officers and agents and said testimony and evidence so made and filed as to the alleged mineral claim containing deposits of gold as aforesaid, and believing therefrom that said alleged mineral claim did in fact contain gold, and that said affidavits were true and that they and the said application were made in good faith, did cause to be executed and issued by and through its proper officers to said defendant in the usual form a patent for said alleged mineral claim; but defendant denies that said application was false and fraudulent in

any respect; defendant denies that the affidavits or any of them made in support of said application were either false or fraudulent in any respect; and defendant further denies that any of the statements or testimony or evidence so made and filed by said defendant were false or fraudulent in any respect; but alleges, moreover, that all of said applications, affidavits, statements, testimony and evidence so made and filed were true in all respects, and made in good faith, and that said defendant at all times has in good faith believed all statements made in said application, affidavits, statements, testimony and evidence in support of said claim for patent.

Seventh: Admits that the defendant herein now and at all times since the 10th day of July, 1902, has claimed to be the owner and entitled to the possession of said mineral claim; but denies that at the time of the filing of said notice of location of said alleged mineral claim, or at any time since, or at the time when said application for patent was made as set forth in the complaint herein, the defendant knew of any false and fraudulent acts of the persons who made the affidavits hereinbefore described or any of them. Denies that any of such persons did any false or fraudulent acts; denies that said defendant knew of its own false and fraudulent acts described in the complaint herein. Denies that defendant has at any time done any false or fraudulent acts on its behalf; denies that defendant knew that all of the said acts as alleged in paragraph 7 of the complaint, were done and performed for the purpose of fraudulently acquiring said lands and premises, and to the end that

the complainant should be deprived of the same in the manner stated in said complaint, or without just or proper consideration. Denies that this defendant knew of any false or fraudulent acts being done or performed for such purpose. Denies that any of the acts and doings by defendant were contrary to equity or good conscience, or tend to the manifest wrong, injury or oppression of this complainant. Defendant alleges, moreover, that all of said acts and doings by the said defendant, its officers or agents, were done in good faith, and in the belief that all of said things, acts and doings were true, and without any knowledge of their falsity.

II.

And for answer to the second cause of action set forth in the complainant's complaint, the defendant answers as follows:

1. Admits that on or about the 14th day of June, 1902, and at all times for many years prior thereto, the United States was the owner of the land described in paragraph 1 of complainant's second cause of action, and of all the right, title, interest and estate therein, said land and premises being fully described and set forth in paragraph 1 of the complainant's second cause of action, and being situate in the Moses Mining District, Okanogan County, Washington, at the point where the Nespelem River joins the Columbia River, reference being had for the purpose of description of said property and placer claim, to the first paragraph of complainant's second cause of action.

2. Admits that on or about the 3rd day of July, 1902, T. B. Early, Dr. F. O. Hudnutt, G. D. Wickman, L. C.

Feighner and C. L. Bussey filed for record in the office of the auditor of Okanogan County, where said land and premises described in paragraph 1 of the complaint herein and as referred to in the preceding paragraph of this answer, were situated, a notice of the location of said lands and premises as a gold placer mineral claim designated as the Wickman Placer claim; admits that thereafter the defendant having acquired the rights of said last named persons in and to said lands and premises, did, on or about the 26th day of November, 1902, make and file in the land office of the United States at Waterville, Washington, its application for a patent from the United States to it of the said alleged Wickman placer mineral claim, in due form as required by the laws of the United States and the rules and regulations of the general land office of the United States.

3. Admits that said application was made, signed and sworn to by one Dr. F. O. Hudnutt, who was then and there the general manager of the defendant corporation, and who was by it duly authorized and empowered to make said application on its behalf. Admits that in said application said manager did, under oath, state that said alleged mineral claim bore gold; defendant not having sufficient information on which to base a belief as to whether on or about the 24th day of August, 1904, as alleged in paragraph 3 of said complaint, in support of said application for a patent for said alleged mineral claim, and to comply with the rules, regulations and requirements of said general land office in the matter of establishing a fact that such alleged mineral claim contained and bore gold, the defendant filed in said local

land office the affidavit of one T. B. Early made on the 18th day of August, 1904, in support of said application for a patent, and therefore defendant denies the same, and further defendant not having sufficient information upon which to base a belief as to whether this defendant filed in said local land office the affidavit of said Dr. F. O. Hudnutt, duly made on August 17th, 1904, wherein said Hudnutt did declare and make oath that said claim contained gold, and therefore defendant denies said allegation. And further, defendant not having sufficient information upon which to base a belief as to whether on or about the 24th day of August, in support of said application for a patent, the defendant filed in said local land office the affidavit of one C. M. Hinman, wherein said Hinman did make oath and declare that said alleged mineral claim contained a deposit of gold, and therefore defendant denies such allegation, and each and every part thereof.

4. Denies that the affidavits of said Early, Hinman and Hudnutt were false and fraudulent in an respect, and denies that any of said affidavits were false and fraudulent in any respect. Denies that said affidavits or any of them were or are false or fraudulent in this, that said alleged mineral claim did not at the time said affidavits were made or at any other time, contain deposits of or any gold; but alleges the fact to be that said mineral claim did at all times contain gold. Denies that any of the respective persons making said affidavits or the defendant itself well knew at the time when said affidavits were made, that said claims did not contain deposits of or any gold; and denies that said re-

spective persons or the defendant have at any time whatsoever known that said mineral claim did not contain gold; but alleges the fact to be that said defendant and its representative persons have at all times believed in good faith that said claim did contain gold; denies that the making and filing of said application or the making and filing of said application for patent for said alleged claim was a false or fraudulent scheme entered into by and between said defendant and the persons making said affidavits for the purpose of wrongfully and fraudulently securing from the complainant for the defendant, the lands and premises referred to herein, or for the purpose of deceiving said local and general land offices or the officers thereof, or to cause them to believe, hold or decide that said alleged mineral claim contained deposits of gold; but defendant alleges that said affidavits, if made, were true, and made bona fide for the purpose of showing that said lands and premises, as the fact is, did contain gold.

5. Admits that relying on the statements and averments in the application for patent, and upon the affidavits introduced by the defendant herein that said alleged mineral claim contained deposits of gold, and that the location of said mineral claim and said application for patent were honestly made, and that the efforts, evidence and proof of said defendant submitted to the local and general land office was submitted in a bona fide effort to secure said mineral claim and a patent therefor in a lawful manner, the Register of said local land office at Waterville as aforesaid, re-

ceived from said defendant the sum of \$250.00 as alleged in paragraph 5 of the complaint herein, allowed said entry, and application, and issued to the defendant a final certificate of entry covering said mineral claim; and admits that the complainant on or about the 31st day of October, 1904, relying upon said application, statements and affidavits of the defendant herein and such testimony and evidence as was introduced by the defendant herein in behalf of said application as to the mineral claim containing deposits of gold as aforesaid, and which was transmitted by it by and through its general land office, and believing therefrom that said alleged mineral claim did, in fact, contain deposits of gold, and that said affidavits and application and such statements and averments therein were true, and that they were made in good faith, did cause to be executed and issued by and through its proper officers to said defendant in the usual form, a patent for said alleged mineral claim; but defendant denies that such application was false or fraudulent in any respect; denies that any of such affidavits as were used or statements made or any testimony or evidence introduced, used or filed in behalf of said application, were false or fraudulent; but alleges the fact to be that said application, affidavits, statements, testimony and evidence aforesaid, were made bona fide and truthfully.

6. Admits that said defendant now and at all times since said 14th day of June, 1902, as alleged in paragraph 6 of the second cause of action herein, has claimed to be the owner and entitled to the possession of said lands and premises; but denies that at the time

of filing said notice of location of said mineral claim, or at any time since or including the time when said application for patent therefor was made, as aforesaid, or at any time whatsoever, the defendant knew of any false and fraudulent acts whatsoever of any of the persons who made any of the affidavits referred to hereinbefore. Denies that said defendant knew at any time of any fraudulent act of any of such persons who made said affidavits or of any false or fraudulent act by its or any person whatsoever acting for it or in its behalf. Denies that this defendant knew that any of said acts were done or performed for the purpose of fraudulently acquiring said lands and premises, or to the end that the complainant should be deprived of the same in the manner referred to hereinbefore and as stated in the complaint of the complainant herein, or without just and proper consideration. Denies that any of such acts and doings by said defendant were or are contrary to equity or good conscience, or tend to the manifest wrong, injury or oppression of this complainant; but defendant alleges that it has at all times referred to herein, acted bona fide, has been ignorant of any false or fraudulent affidavits, testimony or acts of anyone acting upon its behalf, and has at all times acted bona fide in the belief that said application, affidavits, statements and testimony were true.

WHEREFORE, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to its knowledge and belief,

humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed) BURCHAM & BLAIR,
Solicitors for Defendant.

I hereby certify that the foregoing answer is in my opinion well founded in point of law.

Dated this 30th day of July, 1908.

(Signed) JOHN E. BLAIR,
Of Counsel for Defendant.

Endorsements:

Service of the within answer is hereby acknowledged this 30th day of July, 1908, in the County of Spokane, Washington.

(Signed) A. G. AVERY,
Attorney for Complainant.

ANSWER

Filed October 20, 1908.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

No. 1317. REPLICATION.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, for replication thereunto sayeth that it does and will ever maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to ever maintain and prove as this Honorable Court shall direct, and humbly as in and by its said bill it has already prayed.

(Signed) A. G. AVERY,

United States Attorney,

(Signed) J. B. LINDSLEY,

Asst. United States Attorney,

Endorsements:

Solicitors for Complainant.

Personal service of a copy of the within Replication is hereby admitted at Spokane, Washington, this 1st day of February, 1909.

(Signed) BURCHAM & BLAIR,

Solicitors for Defendant.

REPLICATION.

Filed February 2, 1909.

FRANK C. NASH, Clerk.

*In the Circuit Court of the United States, for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

The examination de bene esse of ARTHUR J. COLLIER, a witness for the complainant, under the provisions of Sections 863, 864 and 865, Revised Statutes of the United States and the equity rules of the Circuit Court of the United States for the Eastern District of Washington, in the above entitled cause now pending and undetermined in the said Court, Eastern Division, in accordance with the reference made by the said complainant in said cause, and notice served upon the defendant in said cause, said notice and return thereon being appended to this deposition.

ARTHUR J. COLLIER, a witness produced in behalf of the UNITED STATES OF AMERICA, being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION.

By Mr. LEWIS:

Q-1. Please state your full name.

A. Arthur J. Collier.

Q-2. Your residence, please?

A. Washington, D. C.

Q-3. What is your occupation?

Testimony of Arthur J. Collier.

A. I am a geologist in the employ of the United States Government.

Q-4. Please state where you received your professional training.

A. I graduated from the University of Oregon in 1888. After graduating there, I worked as a surveyor; afterwards as land examiner for several years; then went to Harvard University, and took a course in the Lawrence Scientific School, graduating there in 1894.

Q-5. Please state whether or not you are a mining expert.

A. I am a mining expert, yes.

Q-6. Where are you now employed?

A. By the United States Geological Survey.

Q-7. And how long have you been employed in the Geological Survey?

A. I have been employed by them since 1896.

Q-8. In what capacity?

A. For the first four years as an Assistant Geologist, doing work in the State of Oregon. In 1900 I went to Alaska and worked there for five years. Three years of this time I was employed in an investigation of placer mines in the Sue Peninsula, at and in the vicinity of Nome, Alaska. Two years of this time I was employed in investigation of coal deposits, first on the Yukon river and later near Cape Lisburne. After my return from Alaska in 1905, I was sent out to Idaho during one season to investigate mineral land, south of Wallace. During the next season I was employed from March until July

Testimony of Arthur J. Collier.

in Arkansas, making an investigation of the gold field there. Later on I was sent to the State of Washington to investigate mineral lands on the Colville Indian Reservation, and while there looked over and prospected for gold on something over one hundred mineral claims. I believe that was in 1906.

Q-9. Please state whether or not you are familiar with what is known as the Peabody placer mining claim.

A. Yes.

Q-10. Please state where it is located.

A. It is located in the Colville Indian Reservation at the junction of the Nespelem river with the Columbia river.

Q11. In what state is it located?

A. It is located in the State of Washington.

Q12. Please state whether you can give a description by metes and bounds of this Peabody claim?

A. I have a description of this claim based on the plat filed with the Surveyor General of Washington. It is as follows:

It is situated in the Moses Mining District, Okanogan County, Washington. Beginning at corner No. 1, identical with corner No. 1 of the location. A pine post 4½ feet long, 4½ inches square, set 2 feet in the ground, with mound of earth, scribed 1-680, U. S. L. M., No. 1, Moses Mining District, bears south 26 degrees 4' east 115.95 feet. Thence N. 73 degrees 43' W. 1736. To cor. No. 2. A cottonwood post 4½ feet long, 4½ inches square. Thence N. 59 degrees 46' W. 3572. To cor. No. 3. A cedar post 4½ feet long, 4½ in. sqr., thence S.

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48 degrees 30' W. 1782.5. To cor. No. 4. A cedar post 4½ feet long, 4½ in. sqr. Thence S. 85 degrees 03' E. 291.2. To cor. No. 5. A cedar post 4½ feet long, 4½ in. sqr. Thence S. 6 degrees 42' E. 150. Intersect north bank Nespelem River. 1000. Intersect south bank Nespelem River. 1007.0. To cor. No. 6. A fir post 4½ feet long, 4½ in. sqr. Thence N. 88 degrees 34' E. 2678. To cor. No. 7. A cedar post 4½ feet long, 4½ in. sqr. The northwest corner of Eliza Ricard's fence, bears 3.75 degrees west 2.5 feet. Thence S. 75 degrees 43' E. 2687.8. To cor. No. 8. A post 4½ feet long, 4½ in. sqr. Thence N. 37 degrees 35' E. 470. Intersect south bank of Nespelem river. 510. Intersect north bank of Nespelem river 652.7. To cor. No. 1 and place of beginning, containing 157.173 acres.

Mr. BLAIR: Objected to as not the best evidence and therefore inadmissible.

Q-13. Please state whether or not you have made a geological examination of the Peabody placer mining claim.

A. I have.

Q-14. When was this examination?

A. It was made in the last part of August, 1906.

Q-15. Please state whether or not anyone was with you when this examination was made?

A. Mr. Frank M. Goodwin, a special agent of the Land Office, and also Mr. Freeland was along as cook and teamster.

Q-16. Can you give Mr. Freeland's full name?

A. Mr. E. B. Freeland.

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Q-17. Please state what area of the Peabody claim your examination covered.

A. Our examination covered practically the full claim.

Q-18. Please give a topographical description of this claim.

A. The claim is situated at the mouth of Nespelem river. It extends from the mouth of the river up something over a mile. The southern part of the claim is cut by the Nespelem river, which flows across it in a rather narrow canyon. From twenty to forty acres of land is in this canyon. North of the canyon there is a bench land about ninety feet above the level of the Columbia and Nespelem rivers. At the east end of the claim the bench land stops, and for about a quarter of a mile, more or less, the claim is very narrow. It stops at the East end just above a fall of the Nespelem river. This fall is approximately 175 feet high. The land for the last quarter of a mile below the falls, that is west of the falls, is very rough and is not included in the bench land mentioned. Altogether the claim consists of twenty to forty acres of canyon land, some seventy or eighty acres of bench land, and the pan-handle which runs up Nespelem river to the Nespelem falls.

Q-19. Please state the character of the soil within the limits of the Peabody claim.

A. The soil of the bench land consists of a sandy loam to a depth of four to about ten feet or more in thickness. This rests on a thin layer of gravel, probably one or two feet thick, below which there is a stratified

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clay deposit, about eighty feet of which is exposed, reaching down to the bed of the Nespelem river, below which it is not exposed. The Nespelem canyon is cut across this bench, and its sub-soil consists of this stratified clay with some stones and gravels which have been washed in from the Nespelem river and some which have been washed down from the surface of the bench. The soil in the pan-handle which runs up to the falls consists of the same material as the canyon, but there is on the upper part of the hillside more or less sand of somewhat similar character to that on the bench. This sand, however, is much of it higher than the bench and represents several small benches that are above the main bench.

Q-20. Please state whether or not you examined the soil of the Peabody claim for gold and if so with what result.

A. I examined the soil of the Peabody claim for gold and invariably found little or no gold. There is no gold that will justify mining operations.

Mr. BLAIR: I move to strike the concluding sentence of the witness' answer on the ground that it is not responsive to the question and upon the further ground that it involves an expression of opinion on the part of the witness upon facts that are not stated, and for the further reason that it is immaterial and irrelevant to the inquiry, and also immaterial and irrelevant to the matter in issue in this case.

Q-21. Please state the method of the examination which you made.

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A. In making this examination we used the gold pan, and took samples of the dirt exposed in prospect holes in the wash of the Nespelem river and natural exposures and panned them to find out whether or not they contained gold.

Q-22. Please state whether or not you examined the bed of the Nespelem river for gold?

A. We did.

Q-23. With what result?

A. We examined the bed of the Nespelem river and found no gold at all in the river bed, from the gravel and sand in the bed of the river, washed them, and found no gold. We took pans also from the low benches at the sides of the river and found no gold in them either.

Q-24. Please state whether any examinations other than those to which you have referred were made.

WITNESS: There is a question that ought to have come in, I guess.

Mr. LEWIS: Please state whether any examinations other than those to which you have referred were made.

A. We then proceeded to examine the bench deposits. In doing this, we first took samples from the discovery pit of the Peabody placer and found no trace of gold in them. We then examined several other prospect holes, and found in every case no gold in them. At several places on the edge of this bench there are gullies washed out by the water. These cut down through the surface soil to the clay bed-rock. We took samples from these gullies and panned them and found no gold. These gullies should have contained some

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gold if there was any to be found in the soil of the bench, and our negative results on them show that there is very little if any gold to be found on the bench.

Mr. BLAIR: I object to this statement on the ground that it is not responsive to the question, and is an expression of opinion by the witness, and on the ground that the question asked required a statement of fact. In addition, that it is immaterial and irrelevant both to the question and to the issue involved, and that it be stricken upon the foregoing ground. I move that that portion of the answer beginning with "these gullies should have contained some gold" and all the rest of the answer to the end thereof should be stricken for the grounds stated before.

Q-25. You stated that the sides of these gullies would show gold if the land contained gold, please explain that.

A. If the land contained any gold these gullies should act as sluices in which some of the soil would wash down to the river. In washing down to the river the gold would be left behind in the beds of the gullies, while the light materials would be washed on into the river.

Mr. BLAIR: I move to strike the question and answer upon the grounds stated in the previous objection and motion to strike.

Q-26. Please state whether or not in your opinion the land embraced in this Peabody claim is valuable for placer mining purposes.

Mr. BLAIR: I want to object to the question upon

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the ground that it is immaterial and irrelevant to the issues involved in this case.

A. It is not.

Q-27. Please state whether in your opinion gold can be taken out of this Peabody claim in paying quantities.

A. It can not.

Mr. BLAIR: I want to make the same objection that I interposed to the question, and also move to strike the answer both to the preceding question and this question on similar grounds.

Q-28. Please state whether or not you found any improvements on this claim.

Mr. BLAIR: I object to the question upon the ground that it is not within any allegation in the complaint or bill in this case, and that it is not material or relevant to any issue involved in the case.

A. We found a ditch partially dug from the river just below the falls across the claim and on to the next claim. This ditch was not completed across the bench. It would be dug as a ditch through part of the course, but at places where ravines and gullies were crossed the ditch had never been completed. Through the pan-handle part of the claim, at some places the ditch also had not been completed, and there was about a hundred yards or so which had slid down into the river. At the upper end of the ditch there was no means of obtaining water in it from the river. In fact it was not connected with the Nespelem river. In addition to this ditch there were about six prospect holes which we saw and examined. These prospect holes ranged from five

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feet deep to ten or possibly fifteen feet in some cases.

Q-29. Please state whether or not this ditch contained any water.

A. It did not.

Q-30. Please state whether or not this ditch could be used in placer mining without its containing water.

A. It could not.

Mr. BLAIR: I want to object to the testimony on the ground that there is not sufficient ground laid for the asking of the question to this witness, and on the further ground that it is immaterial to any allegation in the bill of complaint in this action, and for the further reason that it is immaterial and irrelevant to the issues in this action.

Q-31. Do you know what became of the dirt taken from these prospect holes?

A. The dirt was left on the dumps of the prospect holes.

Q-32. Did you or did you not examine this dirt?

A. We did. We took samples of it.

Q-33. Please state whether or not before your examination of it, the dirt had ever been washed.

A. It had not.

Mr. BLAIR: I want to object to that question, and move to strike the answer thereto upon the ground that it is an expression of opinion as to matter about which there has been no sufficient ground laid for the asking of the question or for the giving of the answer thereto by this witness, and on the further ground that it is immaterial and irrelevant.

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Q-34. Please state whether or not in your opinion a prudent man would be justified in developing this property as a mining claim.

Mr. BLAIR: I want to object to that question on the ground that it asks for a conclusion of the witness in a matter with reference to which he has not been shown to be qualified and for the reason that it calls for an opinion upon the insufficient statement of facts presented by this witness, and for the further reason that it is immaterial and irrelevant legally, and upon the further ground that it is immaterial and irrelevant to any of the allegations contained in the complaint or the issues involved.

A. He would not.

Q-35. Please state whether or not operations of any kind were being conducted on the land?

Mr. BLAIR: I object to that question as being absolutely immaterial legally and in view of the allegations of the bill of complaint and in view of the issues involved in this action.

A. There were no mining operations conducted on the claim. There was, however, a man there who was clearing off sage brush on the claim, for what purpose we do not know, but not for the purpose of mining.

Q-36. Why do you say not for the purpose of mining?

A. Because it would not be necessary to clear off the sage brush to mine.

Mr. BLAIR: I move to strike the question and answer thereto upon the ground stated in the preceding objection, and for the further reason that the act of

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clearing off sage brush has not been brought home to the defendants in this action in any way.

Q-37. Please state whether or not this claim was fenced.

A. The claim was not fenced. There had been a fence started; that is, they had set posts for a fence along the north side of part of the claim, but this fence had never been completed.

Mr. BLAIR: I object to the latter portion of the answer as not responsive.

Q-38. Please state whether or not you know the name or names of the parties conducting the operations you have referred to.

A. The party conducting the operation, that is clearing off the sage brush, was Fred Beaudreau.

Q-39. Please state for what, in your opinion, the land within the Peabody claim is most valuable?

Mr. BLAIR: I want to object to the question as wholly irrelevant and immaterial legally and to this cause, and for the further reason that it calls for a statement of opinion on which the witness has not narrated sufficient facts to justify his giving an opinion, and for the further reason that he has not shown himself qualified to testify to the matter inquired about.

A. The land in this claim is most valuable for water power purposes as a power site. It is also valuable as a town site on account of the falls of the Nespelem river, and it is further valuable for agricultural purposes; the land on the bench being very well situated for farming purposes. This land can be irrigated from the Nespelem river.

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Q-40. As between agricultural and mining for which is the land more valuable?

Mr. BLAIR: I want to object to that as irrelevant and immaterial legally as a matter of law, and immaterial and irrelevant under the allegations and issue in this cause.

A. It is more valuable for agricultural.

Q-41. Please state whether or not this Peabody claim has been worked.

A. It has not, not to any extent that would leave evidences of it.

Q-42. Please state whether or not you are familiar with what is known as the Wickman placer claim.

A. I am.

Q-43. Where is it located?

A. It is located just north of the Peabody claim and adjoining.

Q-44. Please state whether or not you have made a geological examination of the soil within the boundaries of the Wickman claim.

A. I have.

Q-45. Please state whether or not you can give a description by metes and bounds of the lands examined by you as the Wickman claim.

A. I can.

Q-46. Please do so.

A. It is situated in the Moses Mining District, Okanogan County, Washington, at the point where the Nespelem river joins the Columbia river, and further described as follows:

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Beginning at corner No. 1, identical with cor. N. 2, Peabody Placer survey No. 680. Multnomah Mining, Milling and Development Company, claimant. A cottonwood post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ ft. above ground, with mound of earth scribed 1-686 in addition to the original markings, U. S., L. M., No. 1, Moses Mining District, bears S. 71 degrees 30" E. 1816 feet. No bearing objects available. S. E. loc. cor. identical with corner No. 1. Survey No. 680 and corner No. 2 Survey No. 60. A post $4\frac{1}{2}$ in. sqr., $2\frac{1}{2}$ feet above ground, set in mound of earth N. E. loc. cor. No. 1 bears N. 26 E. 392 feet. Thence N. 50 5' W. Var. $22\frac{1}{4}$ E. 6481.08. To cor. No. 2. A granite stone 6"-9"-24' long set 12 inches in the ground, chiseled 2-686. Thence S. 44 48' W. 600. To cor. No. 3. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{2}$ feet long, set 2 feet in the ground, scribed 3-686. Thence S. 30 58' E. 3028.71. To Cor. No. 4 on line 3-4 Survey No. 680 at N. 48 30' E. 782.5 feet from cor. No. 4. A cedar post $4\frac{1}{2}$ in. sqr., $4\frac{1}{2}$ feet long, set 2 feet in the ground. Thence N. 48 30' E. Along line 4-3 Survey number 680, Peabody placer, 1000. To cor. No. 5. Identical with cor. No. 3. Survey number 680. A cedar post $4\frac{1}{2}$ in. sqr. $4\frac{1}{2}$ feet long, set in the ground with mound of earth, scribed 5-686. Thence S. 59 46' E. Along line 3-2, Survey No. 680. 2050. Intersect ditch 4 feet wide. Course N. 50' W. 3572. To cor. number 1 and place of beginning.

Q-47. Please state where and how you obtained the description to this Wickman claim.

A. The description is obtained from the Surveyor General of Washington.

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Mr. BLAIR: I want to object to the testimony of the witness, and also to the using of that paper describing the claim, for the reason that it is not the best evidence, and for the further reason that it consists of a mere copy made by the witness.

WITNESS: Ask me another question to get at the—

Q-48. When was this geological examination made by you?

A. The latter part of August, 1906.

Q-49. Please state whether or not anyone was with you when you made this examination.

A. Mr. F. M. Goodwin, of Spokane, and Mr. E. B. Freeland, who acted as teamster and cook.

Q-50. Please state what area of this Wickman claim your examination covered.

A. It covered the whole area.

Q-51. Please give a topographical description of this Wickham claim.

A. The Wickham claim is situated wholly on a bench of the Columbia river, about ninety feet above the level of the river. It is not, however, adjoining the Columbia, there being a line of sand doons there which the claim is carefully surveyed to leave out of consideration.

Q-52. Please state the character of the soil in this Wickman claim.

A. The soil of the Wickman claim is presumably of the same character as the bench land of the Peabody claim. It is developed by several prospect holes, with a maximum depth of fifteen feet, which had not penetrated through the surface soil. The soil in sight, therefore, is a sandy loam.

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Q-53. Please state whether or not you examined this soil within the Wickman claim for gold.

A. We did.

Q-54. With what result?

A. We found no gold on the Wickman claim. We panned several of the prospect holes, but with negative results in every case.

Q-55. Please state whether or not there is any river bed within the limits of this claim.

A. There is not.

Q-56. Please state whether or not you found any mining improvements on this claim.

Mr. BLAIR: I want to object to the question on the ground that it is immaterial legally in view of the law involved, and also immaterial and irrelevant to the issues involved in this case.

A. There Is a ditch, which is an extension of the ditch on the Peabody placer. This ditch is constructed where the construction is easy, and is not constructed where it crosses coolies and lower places.

Mr. BLAIR: I want to move to strike the latter portion of that answer beginning with "where construction is easy" and including all the rest of the answer, for the reason that it is not responsive and is wholly irrelevant and immaterial.

Q-57. Please state the condition of this ditch.

Mr. BLAIR: I want to interpose the same objection as to the preceding question.

A. The ditch is constructed where the construction is easy, and is not constructed across the coolies. In

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addition to the ditch there are six prospect holes which vary in depth from about eight or nine feet to fifteen feet.

Mr. BLAIR: I want to move to strike the question and answer for the reason stated in my preceding objection.

Q-58. Do you or do you not know what became of the dirt taken from the prospect holes?

Mr. BLAIR: I want to object to the question on the ground that it is as to a matter not involved in the issues in this cause.

A. I do know what became of it. It is there on the dumps around the prospect holes.

Q-60. Had that dirt been washed?

Mr. BLAIR: I want to object to the question on the ground that it calls for a conclusion of the witness on a question upon which he has not shown himself competent to testify, and for the further reason that it is wholly irrelevant and immaterial.

A. It had not.

Q-61. Please state whether or not operations of any character were being conducted on the ground.

A. Part of the operations of Fred Beaudreau in removing sage brush from the land was on this land.

Q-62. State whether or not this claim was fenced.

A. It was not fenced, but a row of posts were set along the North side of the claim. The fence had never been completed.

Q-63. Please state the method of examination you pursued.

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A. I took pan samples from the dirt exposed in the prospect holes and washed them.

Q-64. Please state whether or not in your opinion a prudent person would be justified in developing this claim as a mining proposition.

Mr. BLAIR: I want to object to that question upon the same ground taken with reference to a similar question asked with reference to the Peabody claim.

A. He would not.

Q-65. Please state whether or not in your opinion gold can be taken out of this Wickman claim in paying quantities.

Mr. BLAIR: I want to object to this question as involving matter that is wholly immaterial and irrelevant to the issues involved and to the allegations in the complaint, and upon the further ground that it is asking the witness for an opinion upon a matter as to which he has not shown himself qualified to testify.

A. It can not.

Q-66. As between agricultural and mining, for which is this claim more valuable?

Mr. BLAIR: I want to object to that question for the reasons stated in my objection to a similar question asked with reference to the Peabody placer.

A. For agricultural purposes.

Q-67. Please state whether or not in your opinion this land would be valuable for anything other than agriculture.

Mr. BLAIR: I want to object to this on the same grounds as the preceding objection.

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A. It would be valuable for town site purposes.

Q-68. Please state whether or not this claim has been worked.

A. It has not.

Q-69. Recurring to the dirt taken from the prospect holes, state whether or not this dirt had been panned.

A. It had not. There may have been small samples of this dirt taken to the river and panned, but of this there is no evidence. With regard to the bulk of the dirt, it had not been panned.

CROSS EXAMINATION.

By Mr. BLAIR:

Q-1. How long were you at Harvard, Mr. Collier?

A. I was there two years.

Q-2. For what purpose did you go to the Nespelem river?

A. I went there to examine the Peabody and Wickman placers.

Q-3. How did you happen to go there?

A. I was sent there.

Q-4. By whom?

A. By the Land Department at Washington, D. C.

Q-5. With what directions?

A. With directions to examine all the placer mining claims on the Colville Reservation.

Q-6. For what reason?

A. To see which ones were valid claims and which were invalid.

Q-7. When you went you had full information of

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any complaints that had been made, if any, regarding the various placers?

A. We had.

Q-8. What were those complaints that you had in your mind at that time?

A. We had some complaints made by the agent of the Colville Reservation, Captain Webster.

Q-9. What were those complaints?

A. I can not state very definitely in regard to them. I do not have them with me now, and it has been three years since we went there and made the examinations.

Mr. LEWIS: I object to this as improper cross examination.

Q-10. Generally, what were the complaints you had in mind?

A. The complaints were that a great many of the claims were not valid.

Q-11. And did you have in mind the reason?

WITNESS: The reason why they were not?

Mr. BLAIR: Yes.

Mr. LEWIS: I want to interpose the same objection to that question.

A. The reason alleged to us was that in many cases they did not have paying gold properties.

Q-12. I am asking now with reference to the complaints you had in mind and knew of at that time.

A. Yes.

Q-13. Had you any particular information or knowledge at the time you started to examine the Pea-

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body and Wickman claims of the complaints made with reference to these two placers?

A. Not any very definite as distinguished from others of the reservation.

Q-14. Were the Peabody and Wickman claims the first or last that you examined?

A. They were near the last that we examined.

Q-15. What length of time were you on the two placers?

A. I was there two days.

Q-16. What portion of that time did you devote to the Peabody? The Peabody is the one that has the pan-handle.

A. Most of the time was devoted to the Peabody. There were more things to look after on that placer than on the other.

Q-17. And when you say "most of the time" what do you mean?

A. I should say about three-fourths of the time.

Q-18. So that you devoted to the Wickman placer about half a day?

A. To the Wickman, yes; just about half a day, perhaps a little less.

Q-19. Did you state that you found any gold as the result of any of your pannings:

A. No; I did not state that. We did find some gold on one of the claims.

Q-20. Where was that?

A. It was on the Peabody placer.

Q-21. You did not bring that out?

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A. No, I neglected to do that.

Q-22. Why was that?

A. I think it did not come out in the question perhaps. I do not know why it was.

Q-23. Did you frame the questions that were put to you?

A. No; I did not frame them, but I read them over.

Q-24. Did you have anything to do with the drawing up of the questions?

A. I had something to do with the drawing up. I was there when they were being drawn up.

Q-25. Did you suggest the form of the questions?

A. No, I did not.

Q-26. Were you consulted with reference to the form of them?

A. I was consulted, yes.

Mr. LEWIS: I object to that as improper cross examination.

Q-27. You stated that Mr. Goodwin was with you, he is an attorney in Spokane, Washington, is he not?

A. Yes.

Q-28. What part did he play in the panning operations?

A. He panned as well as I did.

Q-29. Did you pan together?

A. Nearly always we panned together. I wanted to see what he got as well as what I got.

Q-30. What was the size of the pan?

A. The ordinary regulation gold pan.

Q-31. Did you pan any from the bed of the Nespelem?

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A. We did.

Q132. Any from the banks?

A. We did.

Q-33. Where?

A. A little below half way, a little nearer the Columbia river than the other end of it.

Q-34. How many pans did you take there?

A. We took three or four pans.

Q-35. In taking these pans, did you pan together, you and Mr. Goodwin?

A. We panned together, yes.

Q-36. Did you see the results of his pans?

A. I did.

Q-37. And he saw the results of yours?

A. Yes.

Q-38. In all cases?

A. Yes.

Q-39. Did you find any gold there?

A. I did not.

Q-40. Recurring to a former question, you said you found some gold, on what placer was it?

A. On the Peabody placer.

Q-41. Where did you find that?

A. We found it up in the pan-handle, and at an elevation of about somewhere from twenty to forty feet above the level of the bench.

Q-42. What elevation above the Columbia would that be?

A. About one hundred and forty feet above the Columbia.

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Q-43. Can you describe where with reference to the bed of the stream or to the banks of the stream, right or left?

A. On the right bank of the stream.

Q-44. Right bank looking up toward the falls?

A. No, right bank looking down. It is about one hundred and forty feet above the Nespelem and above the Columbia.

Q-45. Above the junction?

A. Yes, above the junction of the two.

Q-46. What did you find there?

A. We found two very fine colors.

Q-47. What kind of gold would you call that?

A. Flour gold.

Q-48. You found no flake gold at all?

A. No, no flake gold.

Q-50. And that is the only place you found gold?

A. That is the only place we found any gold.

Q-51. What experience did Mr. Goodwin have in panning?

A. He had no experience except what he had gotten during the summer. The first part of the season you could not depend on his panning, but towards the end of the season when we got to these claims he panned quite as well as anybody.

Q-52. He would find gold sometimes?

A. Yes, he would find gold sometimes.

Q-53. Do you know the amount that he lost?

A. I do not think he lost much.

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Q-54. As at present situated, the prospect holes in both placers are how far distant from water?

A. The nearest ones on the Peabody placer are perhaps two hundred feet from water. The furthest ones are perhaps a half mile.

Q-55. In order to pan from the prospect holes, if you were a miner, what would you have done, would you have panned at the prospect holes?

A. I would not.

Q-56. So that every miner would have taken the dirt away from the prospect holes to pan it?

A. He would, yes. He would have at least during the season of the year when we were there. It might be that getting there at some seasons of the year they would find water.

Q-57. Where?

A. Upon the bench closer to the prospect holes.

Q-58. You saw no indications of water being there at the time these prospect holes were dug?

A. No, I saw no indications.

Q-59. Did you pan any of the dirt from the roads, any road that was running on the Peabody placer?

A. No, I did not.

Q-60. You did not take any dirt out of the road?

A. I did not see any road on the Peabody placer.

Q-61. Was there a cabin on the placer?

A. There was a cabin, I believe.

Q-62. You noticed no road on the Peabody placer?

A. No, I did not notice any road on the Peabody placer.

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Q-63. You did not notice any road running down from the bench to the cabin?

A. No, I did not see it. I do not remember seeing it if I did.

Q-64. Did you pan any of the soil, earth, gravel, on the South side of the Nespelem river on the Peabody placer?

A. Yes, I did.

Q-65. Relatively, at what distance from the stream?

A. Rather near the stream.

Q-66. Did you do any panning upon the high bluff?

A. I did not. That is not on the south side.

Q-67. You described the placer generally, what is the character of that south side of the Peabody placer?

A. It is very largely taken up in the canyon soil, the wall of the canyon and the creek. The lines on the south side are hardly cut back from the break of the cliff.

Q-68. That is the top?

A. Yes, the top of the cliff.

Q-69. What is the character of that cliff? Describe it, beginning with the East end of the Peabody placer up to the upper end of the pan-handle.

A. It is a steep slope down to the Nespelem river, except up to the very East end where the falls of the Nespelem come in.

Q-70. What is it up there where the falls come in?

A. It is rock.

Q-71. What kind of rock?

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A. I did not take any sample to be examined microscopically, but I should judge it to be a diorite.

Q-71. Would you speak of that as crystalline rock?

A. Yes.

Q-73. How far does that diorite or crystalline rock extend down toward the Columbia?

A. I do not think that it extends very far, but I have not been at the exact end of it. It does not extend very far down.

Q-74. At its termination along the Nespelem river, speaking now of the south side cliff, what is the topography of the cliff that you speak of, continuing down to the Columbia? What is its height, for instance, over the Nespelem river?

A. The cliff slopes down to the Nespelem river I believe rather steeply immediately below the falls. Below that a little ways it recedes somewhat. It has a more general slope to the river, and beyond that again it goes up a steep abrupt slope.

Q-75. What is the character of the soil or earth of that cliff?

A. In that cliff the character of the soil is very much like the soil on the north side of the river.

Q-76. What is the height of that cliff over the flowing level of the Nespelem?

A. It is about ninety feet.

Q-77. Is it rock?

A. It is not.

Q-78. Gravel?

A. It is not.

Testimony of Arthur J. Collier.

Q-79. Pebble stones?

A. There is a layer of gravel comes in between the top soil and the clay sub-soil.

Q-80. How thick is that layer?

A. On the south side of the river, I can not speak of that with authority, because I have not examined it all very carefully, but I believe that it is a little bit thicker than it is on the North side.

Q-81. How thick is it on the North side?

A. On the north side, usually two feet is a very great maximum for it.

Q-82. You are speaking now of the thickness of what?

A. Of the gravel.

Q-83. What was Mr. Goodwin's duty on that trip?

A. He was along to look after the legal end of it rather than the other end.

Q-84. So that in looking at these various things you had his legal advice?

A. Yes.

Q-85. The cook was for his true purpose?

A. The cook was for his true purpose, yes.

Q-86. How many prospect holes did you find on the Peabody placer?

A. We found about six.

Q-87. What diameter?

A. They were about 6x6, approximately.

Q-88. You panned them all?

A. We did not pan all of them, no.

Q-89. Why didn't you?

A. We did not have time to.

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Q-90. Were you hurried?

A. We were somewhat hurried.

Q-91. We had some other claims to examine afterwards.

Q-93. There were gullies running through that placer, were there not?

A. Yes.

Q-93. Did you pan all of these?

A. Not all of them, no.

Q-94. You did not for the reason you have given, that you were hurried?

A. Yes.

Q-95. That ditch that you saw there, who had dug it do you know?

A. I do not, except that I assumed that it was dug by the owners of the claim.

Q-96. And the fences were built by the owners of the claim?

A. I do not know.

Q-97. They may have been built by the Indians?

A. They might have been.

Q-98. You know absolutely nothing about that?

A. No.

Q-99. Did you notice that some of the land on these two placers had been plowed?

A. I did not notice it, or I do not remember it, no.

Q-100. You did not notice it so that it became a fact fixed in your memory?

A. No.

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Q-101. And you did not notice that it had been plowed several times?

A. No, I did not notice that it had been plowed several times.

Q-102. This man Beaudreau, do you know who employed him?

A. No, I do not.

Q-103. What is his race?

A. I do not know exactly. I think he is a Frenchman, but I do not know.

Q-104. Mr. Collier, speaking of the survey of the Wickman placer, you said that it was "very carefully surveyed" to omit certain said doons?

A. Yes, that is right.

Q-105. Describe these sand doons?

A. They are low hills of loose sand that blows with the wind.

Q-106. What height are they above the Columbia river?

A. They are, I suppose, about ten or fifteen feet above the level of this bench, and that would make them about one hundred feet above the river, if we assume the bench to be ninety feet above the river.

Q-107. Now are they close to the river?

A. They are close to the river.

Q-108. Do they abut on the river?

A. They abut on the river.

Q-109. Speaking with reference to the south river line on the Columbia, where the Wickman placer runs

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down to the river, this point (indicating same on drawing) with relation to that point, where are these doons?

A. They are northwest of that point.

Q-110. That is to say, they are in the direction toward the river?

A. They are toward the river, between the river and the west line of the Wickman placer.

Q-111. How did you determine that they were outside the Wickman placer?

A. We followed the lines of the Wickman placer.

Q-112. How were those lines shown?

A. They were shown by stakes.

Q-113. You did not survey, or in any way run any lines?

A. No, we followed out the stakes. The stakes were there with the number of the survey on them.

Q-114. When you were there in August was the Columbia river low?

A. The river was rather low, yes.

Q-115. Can you describe the shore line, beginning with that south point of the Wickham placer to which I referred in a former question, down the river?

A. No I can not.

Q-116. Can you tell whether it was rocky?

A. No.

Q-117. Gravel?

A. No.

Q-118. That is, its side appearance?

A. No, I can not tell.

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Q-119. On the Wickman placer, how many prospect holes were there?

A. There were about six.

Q-120. Can you tell accurately.

A. I can tell that there were six. There may have been one or two more that I did not see.

Q-121. And gullies or coolies?

A. There were not so many of these as on the Pea-body placer. There were very few, if any, gullies or coolies. There was quite a large gully off just beyond the end of this placer.

Q-122. Did you pan these various prospect holes?

A. We panned the prospect holes, yes.

Q-123. All of them?

A. No.

Q-124. Do you know how many?

A. I think we panned about two or three.

Q-125. Pan any of the gullies?

A. In the gullies we did not pan at all.

Q-126. Did you pan along the shore of the Columbia?

A. No, we did not.

Q-127. What is the configuration or outline of the Wickman placer at its east end?

A. It is an acute angle.

Q-128. Beginning at that acute angle and running northwest I suppose it is to this point (indicating same on the drawing) at the greatest length of the Wickman placer. What is the topography of the land along that line?

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A. It is just at the inside edge of this bench that I spoke of before.

Q-129. The upper bench?

A. No, the bench above the Columbia, the ninety foot bench.

Q-130. What is the topography of the country North-east of that line?

A. It is very rough. There is a steep ascent to a great deal higher bench. There is a bench about a thousand feet or more above the river.

Q-131. How high?

A. About a thousand feet or something like that. It goes up a very high bench.

Q-132. Is it a thousand feet at its immediate ascent from this line?

A. I think it is a thousand feet above the Columbia river, but it does not really make much difference.

Q-133. My question was if it was a thousand feet at its immediate ascent from this line?

A. It is a steep ascent to another higher bench of about one thousand feet above this one.

Q-134. How far back from that line which is referred to is it necessary to go in order to reach the thousand foot level?

A. I can not tell exactly, but I should think somewhere between a quarter to a half mile.

Q-135. The ascent is not immediate?

A. It is not all the way a bluff.

Q-136. Is this upper bench continuous or are there gullies or ravines running down?

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A. The upper bench is fairly continuous, but will have gullies or ravines at its edge toward the river.

Q-137. "But will have" what do you mean?

A. It will have gullies and ravines at the upper edge toward the river.

Q-138. Are you speaking as a matter of recollection, or how?

A. I am not speaking of it as a matter of recollection, because I have not been up there.

Q-139. You did not examine that bench?

A. No, I did not examine that bench.

Q-140. You did not examine any gullies running down from that to the Wickman or Peabody placers?

A. I did not.

Q-141. You do not know the character of the soil contained in that bench as it inclines toward the river?

A. At some places there are outcrops of crystalline rocks, and at other places it has a rather light colored sandy soil.

Q-142. You saw that from where?

A. I saw that from the bottom of the bench.

Q-143. On the Wickman claim?

A. Down on the Wickman placer, yes.

Q-144. Now Mr. Collier, referring to the character of the soil within the limits of the Peabody claim, you said, did you not, that the bench land soil consists of a sandy loam to the depth of four to about ten feet or more?

A. Yes.

Q-145. Where did you determine that soil depth?

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A. We determined it from the prospect holes. Near the Nespelem river the holes were only four or five feet deep when they got down to the gravel, and then going back from the river, the holes further in had to go a great deal deeper to get to the gravel.

Q-146. Was the bench higher back there?

A. Not very much higher. It might have been a little bit higher.

Q-147. Did you determine the thickness of this gravel which was reached by these prospect holes?

A. Not always. We determined the thickness of it in the bank in the bluff that extends down to the Nespelem river.

Q-148. That is on the north bank?

A. Yes, on the north bank of the Nespelem river. The gravel was thicker on the south bank I am sure.

Q-149. What did you do in Oregon as Assistant Geologist?

A. I worked in Southern Oregon as assistant to Mr. Diller of the Geological Survey.

Q-150. What did you do?

A. We were mapping there the Roseburg Quadrangle, afterwards Coosbay Quadrangle and Port Oxford.

Q-151. What did you have to do to do this?

A. We had to observe the geological formations and report on them and map them.

Q-152. What did you find in those regions, any gold?

Mr. LEWIS: I object to that.

A. We found gold in some places.

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Q-153. What kind?

Mr. LEWIS: Objected to.

A. On the Port Oxford Quadrangle, we found placer gold and of quite the same character as we would have found in the Colville Reservation.

Q-154. Why do you say "would have found" in the Colville Reservation?

A. I should not have said that. I will say as we found in the Colville reservation.

Q-155. Is there anything about the topography, any geological formation in the Nespelem region similar to that in Oregon?

Mr. LEWIS: Same objection.

A. There is very little.

Q-156. In Alaska, you worked there five years, what did you do there?

A. I worked three of the years only on placer mines.

Q-157. What is the character of the gold up there as compared to that of the Nespelem?

Mr. LEWIS: Same objection.

A. The gold up there is coarse, not very coarse, but the finest of the gold up in Alaska would be a great deal coarser than the gold in the Nespelem country. The gold up there is very seldom finer than about seventy-five pieces to make a cent, and those on the Nespelem, the two little colors on that claim, would take about a thousand to make a cent.

Q-158. Is there any similarity between Alaskan gold and the flake gold that you sometimes found in the Nespelem country?

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Mr. LEWIS: Same objection.

A. No, there is not very much similarity.

Q-159. You have found flake gold in the Nespelem country?

A. Not in the Nespelem country. We found flake gold on the bars above the Nespelem river.

Q-160. That is up the Columbia river?

A. Up the Columbia, yes.

Q-161. Did you pan in Alaska?

Mr. LEWIS: I object to that.

A. Yes.

Q-162. In your experience in the coal deposits of the Yukon river, you did not do placer work?

A. We did some placer work.

Q-163. Not with reference to the coal?

A. Not with reference to the coal, but at the same time I visited some placer claims.

Q-164. For the purpose of investigation?

A. For the purpose of investigation, yes.

Q-165. Do you know the character of the geological formation back of these placers?

A. Not in such a way as to be able to report on it.

Q-166. You did not investigate it yourself?

A. Not very thoroughly. I only drove across it in a wagon one day from up the river.

Q-167. Not from the agency?

A. No, not from the agency. I did not go up the river from the Nespelem.

Q-168. While you were there examining the Wickman

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and Peabody placers, had you in mind any statements communicated to you by non-residents near there?

A. No, we did not.

Q-169. You found flour gold along the Columbia and you found flake gold?

A. Yes.

Q-170. In your opinion, where does the flake gold come from?

A. While I was there I formed rather an opinion that the flour gold came probably from pretty far off. Pretty far up the river there were some bars that had in addition some very coarse flakes of gold, and those I think probably had a local origin, but I am not sure about it.

Q-171. You found no flake gold near the Wickman or Peabody placers?

A. No, I did not find any flake gold there, or at any rate no gold that was coarse enough to tell whether it was flake or flour.

Q-172. It is easily distinguished, is it not?

A. Not so easily distinguished in fine gold, no.

Q-173. Had you found flake gold in the Nespelem, your conclusion would have been that it had a local origin?

A. Yes, that would have been my best impression.

Mr. LEWIS: I object to that as incompetent, irrelevant and immaterial.

Q-174. What in your opinion is the cause of the formation of that bar?

WITNESS: The Nespelem bar?

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Mr. BLAIR: Yes.

A. The Nespelem bar is formed by the Columbia river, and was probably formed there at a time when the ice gorged the Columbia down below. These materials that make up the clay were deposited there to a considerable height in the valley of the Columbia. Then the Columbia ice got away and the Columbia returned to its former channel and at one time it flowed about on the level of this upper bench that I spoke of and cut off that wide bench back to the foothills. It is known that the Columbia has cut down further in its present channel and left the bench up above.

Q-175. The bench upon which the Wickman and Peabody placers are located are then of river creation?

A. Are of river origin, yes; of Columbia river origin.

Q-176. Did you investigate any of the upper benches or bars or whatever you call them?

Mr. LEWIS: I object to that as incompetent, irrelevant and immaterial.

A. I investigated them, yes.

Q-177. What was the result so far as the presence of gold was concerned?

A. The result was that I got less gold the higher up from the river I went on the benches. In one or two instances where there was a small stream, I got some pretty good gold high up, over a thousand feet above the river.

Mr. LEWIS: Same objection to the foregoing question and answer.

Q-178. The north side of the Columbia river has

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what kind of a geological formation so far as the character of the rock is concerned?

WITNESS: The north side or rather the east side at this point (indicating same on drawing)—

Mr. BLAIR: Well, above the Columbia river?

A. It is all, or almost all crystalline rocks and some schists. It is nearly all crystalline rocks.

Q-179. You stated that you did not know the character of the rock just back of the river?

A. I only know the outcrop at the falls of the Nespelem. It is probably a diorite though it may be an andesite.

Q-180. The lower benches are richer than the upper benches in gold?

A. They are.

Q-181. What is the reason in your opinion?

A. In my opinion it is because the river has worked over the upper benches to concentrate the gold again on the lower benches.

Q-182. This glacier period and perhaps volcanic period, does that have anything to do with the Columbia river gold?

Mr. LEWIS: I object to that as incompetent, irrelevant and immaterial.

A. It had very little to do with the gold, I think. At the time the glacier was there, there was a great deal of material, of course, brought into the Columbia river, and a large part of it has been removed since. That material probably carried some gold. All that gold is perhaps concentrated upon the lower bars now.

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Q-183. Do you know the direction that glacier took in coming?

Mr. LEWIS: Same objection.

A. The glacier came down the Okonogan valley.

Q-184. Have you ever farmed?

Mr. LEWIS: I object to the question.

A. No, I never have.

Q-185. Have you ever farmed in Washington?

A. I never have.

Q-186. Have you ever raised fruit in Washington?

A. I never have.

Q-187. You have done nothing but placer mine for the government in Washington?

A. Placer mine and other things.

Q-188. In order to placer mine such a property, the presence of water, if gold was present, would be a marked advantage?

A. Yes, it would.

Q-189. How high are the falls above the Peabody and Wickman benches approximately?

A. I do not know exactly, but I think they are about seventy-five feet above the bench.

Q-190. This ditch of which you spoke as running up to, but not connected with the river, is how far below the level of the falls, the top level?

A. It is probably about thirty or forty feet. I can not answer that exactly.

Q-191. You have no recollection on that exact point?

A. I have no recollection on that exact point. I do not know if I determined it. I do not believe I did.

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Q-192. Was there any traffic communication with those placers when you were there, any railroad?

A. No, there was not.

Q-193. What about the Columbia river up to that point?

A. I am not sure about the Columbia, but I believe that there are some falls below, some rapids below that are impassible. I do not know about that.

Q-194. Any railroad or electric line?

A. No.

Q-195. Do you know whether farming is carried on in the Colville reservation, that is, to any large extent?

A. Not to a large extent.

Q-196. What is grown?

A. Corn and wheat.

Q-197. Have you seen any growing?

A. Yes.

Q-198. Wheat?

A. Yes.

Q-199. Corn?

A. Yes.

Q-200. Oats?

A. Yes.

Q-201. That Wickman placer would be valuable for a race course would it not? It is level, is it not?

A. It is pretty near level enough for a race course.

Q-202. It would be pretty good as a rifle range would it not?

A. Yes.

Q-203. Has that land ever been farmed?

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A. I do not know that it has. I do not believe that it has, but I do not know.

Q-204. You said that it would be more valuable for agricultural purposes than mining, in your opinion what is its value as an agricultural property; that is, in dollars and cents per acre?

A. That is very hard to tell, but land similar to that on the south side of the Columba river have sold for from forty to four hundred dollars, and I suppose this would go toward the better mark.

Q-205. When? Now?

A. Very soon now. It has this drawback, it does not have the transportation at the present time.

Q-206. What is the nearest point of railroad transportation?

A. I do not know what the nearest point of railroad transportation is, but it is some point over on the railroad south of that.

Q-207. About how many miles?

A. About twenty-five or thirty miles.

Q-208. Through what character of country.

Mr. LEWIS: I object to that as incompetent, irrelevant and immaterial.

A. The country is several miles of it up over the Columbia gorge, the Columbia Canyon, and after that there is a little counter.

Q-209. As a matter of fact, don't you know that the character of the country from that place down to the Columbia and up over the Columbia to the counter level

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to the nearest railroad station, makes it absolutely prohibitive to be used for agricultural purposes?

A. I do not know that it does. It surely does not if a railroad is built in there.

Q-210. There is no railroad there?

A. There is no railroad at present.

Q-211. What would you grow on that soil?

Mr. LEWIS: Objected to on the ground that the question has already been answered.

A. I would grow fruit probably.

Q-212. What kind of fruit would you grow?

A. I do not know, apples, pears, or any fruit you want to mention almost.

Q-213. Have you had any experience in fruit growing in that country?

Mr. LEWIS: Objected to.

A. No, I have not.

Q-214. You know nothing of the expense that would be entailed to carry the produce from these places to a place of railroad communication?

Mr. LEWIS: Objected to as incompetent, irrelevant and immaterial.

A. I know that it would not be very much greater than the expense that is entailed in conveying fruit from several points up the Columbia river at present.

Q-215. What points are they?

A. One point at the mouth of the San Polle river on the south side. There is another point further up the river at Peach on the south side. Both of these are on the south side.

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Q-216. What is the riparian formation at Peach?

Mr. LEWIS: Objected to on the ground that it is incompetent, irrelevant and immaterial.

A. There is a flat country back from the bank, about one mile I guess.

Q-217. Mr. Collier, did you find any black sand on these two placers?

A. I did.

Q-218. How frequently?

A. I found black sand in practically every pan.

Q-219. Black sand usually accompanies gold, does it not?

A. It usually accompanies gold, but there is not always gold where there is black sand.

Q-220. What about the bed rock on these two placers, do you know anything about that?

A. The bed rock on these two placers is a clay, a very hard clay.

Q-221. Do you know anything about the drainage area of the Nespelem river, of your own knowledge?

A. I have no very definite knowledge.

Q-222. You never traversed that country?

A. No, I never have traversed that country.

Q-223. Is there any difficulty in saving flake gold in panning?

A. It is a little harder to save than flour gold.

Q-224. Why is that?

A. It washes away easier. It washes out of the pan.

Q-225. Asking you with reference to the other placers along the Columbia and about the Columbia river that

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you investigated during this trip, what were they; what were their names?

Mr. LEWIS: Objected to as incompetent, irrelevant and immaterial.

A. There were about a dozen placers at least below Hell-gate rapids.

Q-226. Can you give them in order?

A. I can give them, but I can not call all the names.

Q-227. Hell Gate Bar?

A. Hell Gate Bar. I can refer to this report and call them all off for you.

Q-228. In panning for gold did you find any there at Hell Gate Bar?

Mr. LEWIS: Same objection.

A. I did.

Q-229. What amount?

Mr. LEWIS: Same objection.

A. I will have to consult this report, my notes on it.

Q-230. You found some gold there?

A. I found some gold, yes; hardly enough for placer mining.

Q-231. Had that bar ever been worked, as you recall?

Mr. LEWIS: Same objection.

A. It had, at the upper end at the claim immediately below or very near below the rapids.

Q-232. It had been worked?

A. Yes, it had been worked.

Q-233. By placer?

A. By Chinamen. It was proved that Chinamen worked there, and they had given it up several years ago.

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Q-234. It had been worked?

A. Yes.

Q-235. Do you know how much of a deposit there was?

Mr. LEWIS: Same objection.

A. There was a pay-streak there from a few inches to about a foot thick, and this pay-streak I think at the richest point would perhaps run forty cents to the yard.

Q-236. Cubic yard?

A. Cubic yard, generally very much lower than that.

Q-237. How long a pay-streak was this, how far did it extend?

Mr. LEWIS: Same objection.

A. It extended along the river for about two miles, I believe; possibly a little more.

Q-238. How wide?

Mr. LEWIS: Same objection.

A. The width of it was less than a quarter of a mile always, and in some places only a hundred feet or something like that. The part where they worked it was about a hundred feet, I think.

Q-239. What was the height of this bar above the river?

Mr. LEWIS: Same objection.

A. It was about twenty feet.

Q-240. What was the next bar immediately above that you examined? Creston Ferry?

Mr. LEWIS: Same objection.

A. Creston Ferry. At Creston Ferry there was three or four places where placer mining had been done, but

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there were no valid claims there; no claims that people were holding at the time.

Q-241. Near Peach, did you investigate any?

Mr. LEWIS: Same objection.

A. Near Peach there was a bar in the river that was worked by the Chinese a good many years ago, and probably all worked out. There were some higher bars on the reservation and some claims staked there, but those claims did not contain anything.

Q-242. That was opposite Peach?

A. Opposite Peach.

Q-243. Did you pan it?

A. Yes, I panned it.

Q-244. Where did you pan?

A. I panned a little above Peach, near the ferry.

Q-245. You panned on top?

A. I panned on top and panned the whole face of the bluff all the way down. There was no gold there.

Q-246. There is an island, is there not, between Peach and the mouth of the Spokane river?

Mr. LEWIS: Same objection.

A. Yes.

Q-247. What did you do there?

A. We did not examine that island. That was at one time a placer mine worked by the Chinese.

Q-248. How deep had they worked it?

A. I do not know how deep they had worked, but not very deep.

Q-249. Three or four feet?

Testimony of Arthur J. Collier.

A. I do not think as deep as that, but I will not say positively.

Mr. LEWIS: I wish to continue this objection right along up to the foregoing objection.

Q-250. About three miles above the Spokane river there is a bench, you stated in your report, about twenty feet above the river, what about that, what was done there?

Mr. LEWIS: Same objection.

A. There is a bench where the Chinamen had worked in the past, and I found on this bench a little piece of ground that they had not worked, and got a pretty good showing on that.

Q-251. How much?

A. I wont say positively, but I think about \$1.50 to the pan.

Q-252. You said in your report \$1.60, that is about it?

A. Yes, \$1.60, that is about it.

Q-253. Within what distance are all these places that you examined on this trip?

A. Some of the places are over a hundred miles away from these claims.

Q-254. How much over a hundred?

A. I will not say positively.

Q-255. Approximately?

A. I think probably a hundred and fifty.

Q-256. At Six Mile Creek, what did you do?

Mr. LEWIS: Same objection.

A. We found another bar which parties were claiming, and there was a little thin pay-streak, possibly a foot

Testimony of Arthur J. Collier.

and a half from the top of the ground there was gold in the ground.

Q-257. You stated two feet in your report.

A. Well, two feet. I do not remember that report.

Q-258. How much gold did you get there? Your report shows forty-eight cents per yard, is that it?

A. Yes.

Q-259. Had that been worked?

Mr. LEWIS: Same objection.

A. No; that had not been worked.

Q-260. You panned it?

Mr. LEWIS: Same objection.

A. Yes.

Q-261. Nine Miles?

Mr. LEWIS: Same objection.

A. At Nine Miles there is a bench about twenty feet above the river.

Q-262. Did you pan that?

Mr. LEWIS: Same objection.

A. Yes.

Q-263. What did it show?

Mr. LEWIS: Same objection.

A. It showed a little gold.

Q-264. How much?

Mr. LEWIS: Same objection.

A. I believe about forty cents per cubic yard, but I will not say positively.

Q-265. Did you examine the upper bars and bench at that place?

Mr. LEWIS: Same objection.

Testimony of Arthur J. Collier.

A. Yes.

Q-266. What did that show.

Mr. LEWIS: Same objection.

A. That showed a little gold, but very little.

Q-267. At Wilmot Bar?

Mr. LEWIS: Same objection.

A. There are two benches at Wilmot Bar, one about a hundred feet or so above the river, and one down within twenty feet of the river. The twenty foot one has a good deal of gold on it.

Q-268. You panned that?

A. Yes.

Q-269. What did it show?

Mr. LEWIS: Same objection.

A. Some of the pans showed very well and some very little.

Q-270. Approximately? Your report states ten to fourteen cents.

A. I am under the impression that I got a little more than that in some pans, and some pans contained practically nothing.

Q-271. Rogers Bar, were there any workings on that?

Mr. LEWIS: Same objection.

A. There are workings on that.

Q-272. Who had worked that, do you know?

Mr. LEWIS: Same objection.

A. The Chinamen had worked there. There was one Chinaman working there at the time we made the examinations. There were also two white men working on that bar.

Testimony of Arthur J. Collier.

Q-273. What did you learn there with reference to the paying capacity of that bar?

Mr. LEWIS: Same objection.

A. That bar paid approximately on the very lowest bench of the bar. On the upper bench, where most of the claims were located, it did not pay.

Q-274. Did you find out there that a miner could make as high as \$3.00 per day by placer mining methods?

Mr. LEWIS: Same objection.

A. At one place there is a little spit that extends out into the river, and at that place—

Mr. BLAIR: Will you answer my question? Let me read what you state in your report:

“Half a mile below their workings there is a low gravel bar that is scarcely above the level of the river at ordinary stages; this was nearly all worked over by Chinese. A miner working here reported that under favorable conditions he could make as high as \$3.00 per day.” I will ask you this question, were you informed that at that bar that as high as \$3.00 per day could be made?

Mr. LEWIS: Same objection.

A. Yes.

Q-275. And the bed of the river near there, between Hog Island and the mainland, has been worked by Chinese?

Mr. LEWIS: Same objection.

A. Yes, it has.

Q-276. Placer mined?

A. Yes.

Q-277. There is Blue Bar, did you look at that?

Testimony of Arthur J. Collier.

Mr. LEWIS: Same objection.

A. Yes, sir.

Q-278. Did you pan it?

A. I did.

Q-279. With what result?

Mr. LEWIS: Same objection.

A. We got some colors of gold in a great many pans there.

Q-280. You found a pay-streak?

A. We found a thin pay-streak, about a foot thick.

Q-281. What did the pay-streak show in value of gold?

Mr. LEWIS: Same objection.

A. The pay-streak showed somewhere from eight to thirty or forty cents, I think. I do not remember exactly.

Q-282. Two to forty-one you say in your report.

A. I said eight to forty; my report says two to forty-one cents.

Q-283. Where was that gold found?

A. On the pay-streak.

Q-284. It was confined to the pay-streak?

A. There was a small amount of gold above the pay-streak.

Q-285. What do you mean by disseminated gold?

A. I mean gold that is disseminated through the whole thickness of over-burden.

Q-286. Turtle Rapids?

Mr. LEWIS: Same objection.

A. We found them mining there, actually mining when we prospected.

Q-287. Were there Chinese workers there?

Testimony of Arthur J. Collier.

Mr. LEWIS: Same objection.

A. Yes.

Q-288. Did you pan there?

Mr. LEWIS: Same objection.

A. I did.

Q-289. With what result?

Mr. LEWIS: Same objection.

A. I got one pan with upwards of three hundred colors in it.

Q-290. What would that show; what would that bar show per cubic yard?

Mr. LEWIS: Same objection.

A. It showed rather low per cubic yard.

Q-291. How much? Your report says thirty cents per cubic yard.

A. Thirty cents per cubic yard in the pay-streak, but counting in the over-burden I think a good deal below ten cents a yard.

Q-292. Had there been any hydraulicing done there recently near that bar?

Mr. LEWIS: Same objection.

A. There was hydraulicing in process there at the time of my examination.

Q-293. Do you know anything about a pay-streak about a half mile above this point?

Mr. LEWIS: Same objection.

A. Yes.

Q-294. What was shown there?

Mr. LEWIS: Same objection.

Testimony of Arthur J. Collier.

A. There is a pay streak that lies exactly on the surface of the ground or very near to it.

Q-295. Did you pan that?

Mr. LEWIS: Same objection.

A. It showed better per cubic yard. I think that I got thirty or forty cents out of it. However, I sent a sample of that pay-streak away to be analysed and on one test they did not get anything out of it. I objected to that, and they tried again and they got a little more. I believe they took three samples on that, and they were all below our panning.

Q-297. You said in your report "At places attempts at mining have been made on the lower bars at intervals above this point for several miles, but the workings are now abandoned?"

Mr. LEWIS: Same objection.

A. Yes.

Q-298. You further stated on page 67 of your report that mining by hydraulicing was in progress on the bench and at the mouth of Stranger Creek?

Mr. LEWIS: Same objection.

A. Yes.

Mr. BLAIR: I will stipulate that all the questions with reference to these various placers will be subject to the same objection.

Q-299. At Stranger Creek you took pannings did you?

Mr. LEWIS: Same objection.

A. Yes.

Q-300. What did it show in value?

Mr. LEWIS: Same objection.

Testimony of Arthur J. Collier.

A. One of the pans showed a fairly good return; I think about forty cents.

Q-301. It went down to five and a half cents?

A. It went down, but I do not remember how much the lowest was.

Q-302. What is the geographical relation, Mr. Collier, of the Sanpoil valley to the Columbia river so far as the flow of the Sanpoil river is concerned? Does it flow into the Columbia river?

A. Yes.

Q-303. Did you investigate the benches along the Sanpoil?

A. We investigated the benches, yes.

Q-304. Did they show approximately the same as along the Columbia?

Mr. LEWIS: Same objection.

A. They did not show as much gold in a good many places.

Q-305. You heard reports from miners there that there was gold along the river?

Mr. LEWIS: Same objection, and also on the ground of hear-say.

A. We saw a great many claims that were staked along the river.

Q-306. Along the Sanpoil?

A. Yes.

Q-307. With reference to the Columbia river valley generally, Mr. Collier, what is the local reputation of that river with reference to the presence of gold along its course, etc.?

Testimony of Arthur J. Collier.

Mr. LEWIS: Same objection.

A. Its general reputation is that there is gold in a good many places along it, but that nowhere has it been able to be worked at a profit. The Chinese have tried in several places along the Columbia and then they have suspended operations.

Q-308. When did they work?

A. One of them is working there at the present time, or was working there when I was there.

Q-309. Where does the Snake river flow into the Columbia?

A. It flows in below this point.

Q-310. What is the source of the gold in the Columbia river?

A. I suppose it is from the rocks north and east of the Columbia river.

Q-311. Mr. Collier, do you know where Stevenson's Ferry is? Is it very close to the Nespelem bar?

A. I think not. I want to get my bearings. I remember the ferry, but I do not know which one it is.

Q-312. You know of Stevenson's Ferry?

A. I do not. We went across by the upper ferry.

Q-313. Did you know that there was a large area just at Stevenson's Ferry that had been worked by placer methods?

A. No; I did not know it.

Q-314. You knew nothing of land down the river a few miles, say five or six miles, which had been worked for placer mining purposes?

Testimony of Arthur J. Collier.

Mr. LEWIS: Objected to as incompetent, irrelevant and immaterial.

A. No; I did not.

Q-315. You did not know it had been worked, and had been resolved into a fruit ranch after being exhausted?

Mr. LEWIS: Same objection.

A. No; I did not know it.

Q-316. You do not know the height of Stevenson's Ferry across there there to which I refer, the relative height of that and the Wickman and Peabody placers?

A. No I do not; I think it is lower than they are.

Q-317. You do not know though?

A. No; I am not positive.

Q-318. As a matter of fact you would not be surprised if it were higher?

A. Yes, I should be surprised if it were higher.

REDIRECT EXAMINATION BY MR. LEWIS:

Q-1. Mr. Collier, going back to the Peabody and Wickman claims, you stated that you were somewhat hurried in your examination?

A. Yes.

Q-2. Please state whether or not you were hurried to such an extent as to interfere with the accuracy of your examination.

Mr. BLAIR: Objected to as calling for a conclusion of the witness, which is only for the court, and upon the further ground that it is irrelevant and immaterial.

A. We were not.

Q-3. Are you or are you not willing to state that these examinations which you made, were up to the average

Testimony of Arthur J. Collier.

standard of accuracy in examinations of that character?

Mr. BLAIR: I want to object to that as incompetent, immaterial and irrelevant.

A. They come up to the average of accuracy.

Mr. Blair: I move to strike the answer for the reason that whether or not they come up to the average examination is a matter that is immaterial, and there is nothing to indicate what the average examination is.

Q-4. I refer, Mr. Collier, to the average of your own examinations.

A. They were up to the average of our own examinations, yes.

Mr. BLAIR: I move to strike the answer for the same reason.

Q-5. You have stated, Mr. Collier, that Mr. Goodwin during the early part of the season could not be left to his own devices in making examinations, but in the latter part he was entirely trust-worthy. Please state during what part of these examinations you made the Peabody and Wickman claims' examinations?

A. In the latter part of the examinations.

Q-6. Please state whether or not you saw the results of Mr. Goodwin's panning?

A. I did.

Q-7. Were or were not those results taken into consideration in forming your conclusions?

A. They were taken into consideration.

Q-8. You stated on your cross examination that you found in one place some very fine colors, what area of the claim did these colors cover?

Testimony of Arthur J. Collier.

A. They covered a very small area, possibly one or two acres of land. There was there a small pay-streak in some ground, a part of the bench a great deal higher than the main bench of this claim, about forty feet I think above the level of the claim, and this little pay-streak extended over about one or two acres of ground at that elevation. This ground is situated in the pan-handle part of the Peabody claim.

Q-9. Other than the area to which you have just referred, did you find any other colors?

A. We found no other colors.

Q-10. How many colors were there to the cent in the area to which you have just referred?

A. The colors were exceedingly fine, and could not be seen without a microscope and I should assume them to be about one thousand to the cent, or possibly smaller.

Q-11. State the greatest number of colors you found in any pan?

WITNESS: Along the Columbia river?

Mr. LEWIS: I am referring to the Peabody claim.

A. The greatest number found at that time were those two colors found in one pan.

Q-13. How many pans were there to the cubic yard?

A. Approximately one hundred and fifty pans to the cubic yard. The number, to be accurate about it, is a little less than that, about one hundred and thirty, or one hundred and twenty-eight to the cubic yard, but for all practical purposes we assume the pans to be one hundred and fifty to the cubic yard while we were on the Columbia river.

Testimony of Arthur J. Collier.

Q-13. The two colors which you said you found, were they coarser or finer than those about which you testified you found one thousand to the cent?

A. Well, those two colors I would estimate at about one thousand to the cent. Really they were as fine colors as we saw at any time during the season. They were exceedingly fine colors.

Q-14. As to the amount of gold you found in this area, could that be developed as a paying proposition?

A. It could not.

Mr. BLAIR: I object to the question and answer on the ground that there is no basis laid for asking this witness such a question; that it is immaterial and irrelevant to the allegations and issue in this case, and for the further reason that it calls for an opinion on a question of fact, upon which the witness has not shown himself qualified to testify.

Q-15. What is the minimum value per cubic yard which would justify working placer claims as a commercial proposition?

Mr. BLAIR: I want to object to that upon the grounds stated in the preceding objection.

A. That all depends so much on the surroundings of the claim.

Q-16. As to this Peabody claim?

Mr. BLAIR: I want to object to that on the ground that it is wholly immaterial and irrelevant.

A. The Peabody claim could not be worked on any basis less than ten cents to the cubic yard, and the deposit would have to be at least ten feet thick.

Testimony of Arthur J. Collier.

Mr. BLAIR: I move to strike the answer on the reason stated in my preceding objection.

Q-17. On cross examination you testified as to a number of claims other than the Wickman and Peabody?

A. Yes.

Q-18. Please give some idea as to the maximum and minimum distances of these claims from the Wickman and Peabody claims.

A. The nearest of these is at Hell Gate Rapids, and is situated about twenty miles, I believe, above the mouth of the Nespelem river. The other claims are situated further than this and up to one hundred to perhaps one hundred and fifty miles.

Q-19. In selecting spots for your examinations on the Peabody and Wickman claims, by what were you governed?

Mr. BLAIR: I object to the question because it is wholly irrelevant and immaterial as to what the state of mind of this witness was.

A. We were governed in the first place by the prospect holes which the claimants had dug on the claims. One of these prospect holes was marked "Discovery Pit" and asserted that the discovery of gold had been made there. We, of course, necessarily panned in that hole, and panned in other holes situated about similarly to it. We panned along the river and selected the gravel next to the bed rock in order to see if there was any possibility of there being gold there. We also panned in the sides of the creek to see if there was gold there, and also panned in the little gullies that ran down to the

Testimony of Arthur J. Collier.

creek. We selected the pans always with a view to giving the claimants any benefit of any doubt that there might be as to the value of the claims.

Mr. BLAIR: I move to strike the question and answer, as the answer is not responsive, and also is irrelevant and immaterial.

RE-CROSS EXAMINATION BY MR. BLAIR.

Q-1. You stated that you panned the prospect holes that were made by the claimants?

A. We did.

Q-2. How do you know that they were made by the claimants?

A. One was marked as being made by the claimants.

Q-3. What about the others?

A. The others were all of the character as that made by the claimants.

Q-4. Was there anything about the general configuration of these holes in the ground that suggested that the claimants made them?

A. There is such a thing as the configuration of a hole in the ground suggesting that the claimants made it.

Q-5. There is nothing about these holes that suggested that claimants made these particular holes?

A. Well, the claimants asserted—

Mr. BLAIR: I am asking, Mr. Collier, why you assert that these holes were made by claimants, is that not a conclusion?

A. It is a conclusion that is based upon a map that they submitted.

Testimony of Arthur J. Collier.

Q-6. All these claims about which I examined you on cross examination are up the river from the defendant's placers?

A. Yes.

REDIRECT EXAMINATION BY MR. LEWIS.

Q-1. Did I understand you to say that one hole was marked to indicate that it was the discovery hole of the Multnomah Company?

A. Yes.

RECROSS EXAMINATION BY MR. BLAIR.

Q-1. How was it marked?

A. It was marked "Discovery Hole," and had a notice put up on it.

Q-2. How was it signed?

A. I can not remember now.

Q-3. You do not know whether it was signed by the Multnomah Company or not?

A. No, I do not know.

Q-4. You do not know by whom it was signed?

A. No, I do not.

Q-5. Do you know the contents of that notice?

A. The notice called this the discovery hole.

(Signed) ARTHUR J. COLLIER.

UNITED STATES OF AMERICA, }
DISTRICT OF COLUMBIA. } ss.

I, ANSON S. TAYLOR, a United States Commissioner for the said District, duly commissioned and authorized under Section 863 of the Revised Statutes of the United States to take and certify depositions, do

hereby certify that pursuant to the annexed notice and stipulation, the foregoing deposition of ARTHUR J. COLLIER was taken before me, after having been first carefully examined and cautioned and duly sworn to tell the truth, the whole truth and nothing but the truth, and that he thereupon testified as above shown, and that the deposition by him subscribed as above set forth was reduced to writing in the presence of the witness and from his statements and was subscribed by said witness in my presence, and was taken at my office, 1407 New York Avenue, Washington, D. C., on the day and at the time set forth.

I further certify that the reason for taking said deposition was and is and the fact was and is that the said ARTHUR J. COLLIER lives in the City of Washington, D. C., and more than one hundred miles from the place where said issue is appointed to be tried, to-wit, Spokane, State of Washington; that I am neither of counsel nor attorney to either of the parties to this suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said deposition with my own hand to the court for which it was taken, I have retained the same for the purpose of being sealed and directed with my own hand and for speedy and safe transmission to the said court, to remain under my seal until opened.

WITNESS my hand and the seal of my said office as United States Commissioner for the District of Columbia, at the City of Washington, in the said District, this 22nd day of March, A. D. 1909.

(Signed) A. S. TAYLOR,

U. S. Commissioner.

(Seal)

No. 1317.

*In the Circuit Court of the United States, Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

*Complainant,**vs.*MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,*Defendant.*

NOTICE.

To the above named defendant, and to Burcham & Blair, your attorneys of record:

PLEASE TAKE NOTICE, That the complainant herein will take the deposition of Arthur J. Collier, who resides in the City of Washington, District of Columbia, and who resides more than one hundred miles from the place of trial herein, and more than one hundred miles from any place at which a Circuit Court of the United States for the Eastern District of Washington, is appointed to be held by law, at the final hearing, for use on behalf of the complainant, before Anson S. Taylor, a United States Commissioner, at No. 1407, New York Avenue, in the City of Washington, District of Columbia, on the 18th day of February, 1909, at the hour of ten o'clock in the forenoon of said day, and thereafter, from day to day, as the taking of the deposition may be adjourned, and said testimony will be so taken in accordance with the provisions of Sections 863 and 865 of the Revised Statutes of the United States and the Equity Rules.

Dated this 1st day of February, 1909.

(Signed) A. G. AVERY,

(Signed) J. B. LINDSLEY,

Solicitors for Complainant.

The Solicitors for the defendant in the above-entitled cause, do hereby acknowledge personal service on us, in Spokane, Spokane County, Washington, on the 1st day of February, 1909, of the foregoing notice to take deposition.

(Signed)

BURCHAM & BLAIR

Attorneys for Defendant.

Endorsements: Notice of Taking Deposition.

Filed in the U. S. Circuit Court for the Eastern District of Washington, February 1, 1909.

FRANK C. NASH, Clerk.

No. 1317.

*In the Circuit Court of the United States, Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED that the testimony of Arthur J. Collier, which was, under complainant's notice heretofore served, to be taken on behalf of the complainant at Washington, D. C., on the 18th day of February, 1909, shall be taken on the 6th

day of March, 1909, before Anson S. Taylor, United States Commissioner at No. 1407 New York Avenue, in the City of Washington, District of Columbia, at ten o'clock in the forenoon, instead of being taken at the time originally fixed therefor.

Dated this 12th day of February, 1909.

(Signed)

A. G. AVERY,

United States Attorney.

(Signed)

BURCHAM & BLAIR,

Attorneys for Defendant.

Endorsements: Stipulation as to taking of Deposition.

Filed in the U. S. Circuit Court for the Eastern District of Washington, February 12, 1909.

FRANK C. NASH, Clerk.

Endorsements:

Deposition of Arthur J. Collier filed May 5, 1909.

FRANK C NASH, Clerk.

Published this 6th day of May, 1909, by order of Court per stipulation on file.

(Signed) FRANK C. NASH, Clerk.

No. 1317.

*In the United States Circuit Court for the Eastern
District of Washington, Eastern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

MULTNOMAH MINING, MILLING AND DEVELOP-
MENT COMPANY, a corporation,

Defendant.

UNITED STATES OF AMERICA }
STATE OF WASHINGTON, } ss.
COUNTY OF SPOKANE. }

BE IT REMEMBERED, that the above entitled cause came on for the taking of testimony before B. B. Adams, Esq., Special Examiner, at Spokane, Washington, on the 13th day of July, 1909, at 10:00 A. M., in the Federal Court Room, of the above entitled court. The complainant was represented by its counsel, A. G. Avery, United States District Attorney, and the defendant was represented by its counsel, Messrs. Burcham & Blair, whereupon the following proceedings were had:

Mr. AVERY: I offer in evidence the record showing the different proceedings and things done in connection with the locating and holding, working and filing for a patent for the Peabody placer mining claim, being the same Peabody, or the alleged placer claim mentioned in the pleadings and in the complaint.

Mr. BLAIR: That is all right; no objection.

Record marked complainant's exhibit No. 1, and admitted in evidence.

Mr. AVERY: I offer in evidence a certified copy of the papers in connection with the Wickman placer mining claim referred to in the bill of complaint, the papers being in connection with the location, occupation, working and application for a patent of the claim and certified by the Commissioner of the General Land Office under date of June 11, 1907.

Mr. BLAIR: No objection.

Papers marked complainant's exhibit No. 2, and admitted in evidence.

Mr. AVERY: I offer in evidence the Lis Pendens in this case which purports to have been filed in the office of the Auditor for Okanogan County, Washington, on the 14th day of March, 1909, and I offer the Lis Pendens and also the endorsement on the outside which shows it was filed.

Mr. BLAIR: No objection.

Lis Pendens marked complainant's exhibit No. 3, and received in evidence.

Mr. AVERY: I offer in evidence as part of the record made by the defendant in this case for the purpose of securing patents to the two claims mentioned, a plat which was filed by it, the defendant, and prepared by it. The offer is not made for the purpose of showing or proving as true all of the statements made therein, or in connection therewith, but as a part of the record, that is, all to be admitted in evidence, and particularly to show the outlines of the Wickman and Peabody placer claims, the improvement and discovery shafts, their boundaries, and their relative locations in connection with the Nespelem and Columbia rivers. It is not meant, however, to acknowledge the existence of the improvement ditches mentioned on the plat, or the amount of the improvement, or that there is any gold, on either of the claims.

Mr. BLAIR: No objection.

Plat marked complainant's exhibit No. 4, and received in evidence.

Mr. AVERY: Mr. Blair, will you admit that I was authorized by the Attorney General of the United States to prosecute this action?

Testimony of F. M. Goodwin.

Mr. BLAIR: Yes.

Mr. AVERY: You do?

Mr. BLAIR: I do.

F. M. Goodwin, a witness called on behalf of the complainant, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. AVERY:

Q. Your name is F. M. Goodwin?

A. Yes, sir.

Q. You reside in Spokane, Mr. Goodwin?

A. Yes sir, I do.

Q. How long have you resided here?

A. About four years and a half.

Q. What is your age, Mr. Goodwin?

A. 38 years.

Q. In the fall of 1906 what position did you occupy in connection with the United States Land Office?

A. I was special agent of the general land office, had charge of this division comprising Eastern Washington and the State of Idaho.

Q. That is commonly known as Chief of the Field Division, isn't it?

A. Yes, sir.

Q. Do you recall during the latter part of that year of having made an examination of the mineral claims, or alleged mineral claims, up on or about the Nespelem river?

A. I do.

Q. And who were you in company with when such examinations were made?

Testimony of F. M. Goodwin.

A. At the time of the examining of the claims on the Nespelem river, Mr. Arthur J. Collier and Mr. E. B. Freeland.

Q. Do you recall an examination of the Wickman placer and Peabody placer claims?

A. I do.

Q. When, if at all, were you on those claims for the purpose of examining them?

A. When I was there was the last two days of August, or the last day of August and the first day of September, 1906.

Q. I call your attention to complainant's exhibit No. 4 and ask you if the boundaries that purport to be the boundaries of the Peabody and Wickman are substantially as you found them at that time?

A. They are.

Q. Please state to the court what your purpose was in examining those claims with Mr. Collier at that time?

A. To ascertain whether or not those claims had any value for placer mining purposes.

Q. Were you acting at the instance of the Secretary of the Interior?

A. Yes, sir.

Q. Now I wish you would state what you did in your examination of those claims for the purpose of ascertaining whether there was gold on them or not, or in them?

A. Having located the lines of the claims we proceeded to examine the Nespelem river and the different improvements we found on the claims.

Q. Well now let me ask another question. Taking up

Testimony of F. M. Goodwin.

first the Peabody claim, Mr. Goodwin, I wish you would, as well as you can, describe that claim, its topography and so forth, commencing perhaps up at the eastern end of it?

A. The eastern end of the Peabody placer claim crosses the Nespelem river at a place where the river cuts a gorge into the solid rock formation.

Q. What have you got there?

A. These are notes.

Q. That is a note book?

A. Those are notes taken on the ground at the time of the examination.

Mr. BLAIR: I want to interpose an objection to the use of that memorandum on the ground that no proper basis has been laid for its use by this witness.

Mr. AVERY: I will ask you, Mr. Goodwin, if, during your examination of these two claims, if you made notes of the result of your observations?

A. I did.

Q. I will ask you if those notes are such results?

A. They are.

Q. Do you think that you could give all of this information that I have asked independent of those notes?

A. I could not.

Q. You could not?

A. No. I could give it generally, but I could not be specific.

Q. Very well. Now I will ask you, wherever it is necessary to refresh your recollection to do so and answer the question that I propounded.

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Mr. BLAIR: I interpose the objection and suggest that it would be proper to show where he is able to use his own recollection and where not.

A. The Nespelem river flows almost due east and west through the Peabody placer claim, emptying into the Columbia river at the western end of the placer. This river cuts a gorge through the claim and at the eastern end of this gorge it cuts through almost solid rock. This rock formation extends down along the banks of the river more than a quarter of a mile to the west. The height of the rock formation above the water decreases as you go west. The eastern portion of the claim, however, in the shape of a pan handle, is almost exclusively this rock formation with some soil on the top and between a quarter and a half mile to the west the gorge opens out. Now the land on the north slope of the Nespelem river is rough and broken, but on the south side there is some gravel and sand deposits and the bluff rises up to the south line of the Peabody placer claim. On the North side, north of the Columbia—

By Mr. BLAIR: Which is the north side?

A. The north side of the Peabody claim is the side that adjoins the Wickman claim. On the western end of the Peabody and north of the Nespelem river is a small flat of some five or six acres. It is not very high above the river, ranging I should say from 5 to 10 feet, but with a greater slope to the north. Then between that flat and the rock gorge, about which I have spoken, the land is broken and extends to the north in this irregular shape perhaps a quarter of the way across the Peabody

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claim going north. This part, however, is in irregular shape. The northern part of the Peabody claim is more level and is on a bench about 80 or 85 feet above the waters of the Columbia river. At a point where the northeast corner of the Wickman claim touches the Peabody claim which is about a quarter of a mile west of the northwest corner of the Peabody claim there was a land slide.

Q. Let me ask you again—will you repeat that?

A. At a point—

Q. You mean the northwest corner of the Peabody claim?

A. The northeast corner of the Peabody claim, there is a land slide.

Mr. BLAIR: What is that?

A. There is a land slide, a land slide towards the Nespelem river edge. This land slide was about 600 feet in width and the earth had dropped from 8 to 10 feet perpendicularly. There was some little sand along the Nespelem river in different places where it flows through the Peabody claim. I believe that about describes the topography.

Mr. BLAIR: What was that?

A. There is some sand at various places along the Nespelem river where it flows through this claim.

By Mr. AVERY:

Q. Were those few acres, I think you said that was 6 or 8 feet higher than the other, that you spoke of, were those acres in the Wickman or Peabody claim?

Testimony of F. M. Goodwin.

A. They were in the Peabody claim and outside of the Peabody claim next to the Columbia river.

By Mr. BLAIR: That is, they extended out?

A. They extended out to the river.

By Mr. AVERY:

Q. Didn't you say that they fell away north?

A. No, they rose to the north.

Q. And rose to the north?

A. Rose to the north and west.

Q. Now, what if any ditch appeared to have been dug at that time on the Peabody claim?

A. There was a ditch crossing part of the eastern end of the Peabody claim, east of the land slide of which I have spoken and also west of the land slide.

Q. Did that connect with the river in any way?

A. There was no connection out of it.

Q. How far from the river did it run—that is, how far from the river was the eastern end of the ditch?

A. The eastern end of the ditch was in the solid rock formation a short distance from the river. I could not give the exact number of feet, but it was not connected with the river.

Q. What improvements were there on the claim up there in the way of improvements up at that end independent of any prospecting or holes for prospecting?

Mr. BLAIR: I object to any question with reference to the improvements on the ground that it is irrelevant and immaterial.

A. There was a cabin located—a cabin on this claim north of the Nespelem river.

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Q. About where was it?

A. Oh, about half way across the claim east and west (indicating on complainant's exhibit No. 4). This would be about the center of the Peabody claim—perhaps a little to the east of the center.

Q. Anything else there?

A. There was also a small tunnel driven in the solid rock formation on the south side of the Nespelem river very close to the eastern end of the claim.

Q. How long was the hole or tunnel, or didn't you notice?

Mr. BLAIR: I make the same objection to the question of improvement on the ground that it is immaterial and irrelevant.

A. We didn't measure the tunnel. There was also some pits on this claim.

Q. Yes, I was going to come to those. Now I call your attention to complainant's exhibit No. 4, that part of the Peabody which is designated as "Improvement One Discovery Shaft." Did you see it?

A. Yes, sir.

Q. Did you find that place and was it on the claim?

A. I did.

Q. Did you make any examination of it for the purpose of ascertaining whether there was any gold in it?

A. I did.

Q. Or had been?

A. I did.

Q. Then please state what you did and the result?

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Mr. BLAIR: Do you recall, Mr. Goodwin, without referring to the notes?

A. Yes, I recall that particular pit on account of the fact that there was some stakes around the pit at that time, but I don't recall the holes without reference to notes. Mr. Collier and I both panned some dirt there.

Q. How did you find this so-called discovery shaft, what was its condition, size, and so forth.

A. I have not a memorandum of its size.

Q. Well, can you state?

A. It was a pit about 6 feet square at the top and perhaps 8 or 10 feet deep as I recall it.

Q. What did you do towards testing the ground in it and so on?

A. Well, we cleared off the dirt that had fallen down so as to get a solid bank and a solid bottom and took samples of the dirt in gold pans and took them down to the Nespelem river and panned it.

Q. What was the result of the panning?

A. Neither Mr. Collier nor myself found any colors in those sands.

Q. How long have you been in the service of the government in its land department.

A. I was in that service in all about a little less than seven years.

Q. During that time what has been your duty in the matter of examining lands?

A. Well, the major portion of the time I was engaged in examining lands and cases I had in hand.

Q. What is the extent, or was then the extent, of

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your examining or testing grounds for placer or quartz or any other mining?

A. I had had some little experience in Montana and previously I spent about two months and a half in Idaho with Mr. Collier on some duty—he was with me on this trip and examined the mineral claims. In both of these fields, however, I had but small experience in panning. Previous to the time of the examination of these two claims I had been panning the dirt on the Columbia river in the vicinity for something over two months and a half.

Q. Continuously?

A. Practically every day.

Q. For the purpose of testing the grounds?

A. For the purpose of testing placer claims.

Q. What further did you do, did you make any further examination of that pit?

A. I do not recall panning any other dirt from this pit myself.

Q. What was the nature of the dirt that you found in that hole, in other words, what kind of ground on it?

A. The hole extended—the hole at the top extended through a clay soil and to my recollection it went down into the gravel formation. This particular pit.

Q. That particular one?

A. Yes, sir.

Q. Now I call your attention again to complainant's exhibit No. 4 and to that part that is designated on the Peabody placer as "Improvement Two Shaft," and ask you if you saw that shaft?

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A. Yes, sir.

Q. What if any examination did you make of it?

Mr. BLAIR: Do you recall that examination?

A. I do not recall that examination without consulting my notes.

A. We panned two pans of dirt from that pit.

Q. With what results?

A. We got no colors.

Q. How much care did you exhibit and use in these panning operations that you speak of?

Mr. BLAIR: I object to the form of that as being improper. The witness has stated the method of his examination.

(Question withdrawn.)

Q. State how you got the dirt that you panned from this shaft No. 2?

A. I would like to state in that connection that in all the panning that I did on this trip and on these claims Mr. Collier and I took our dirt at the same time and mine was taken under his direction as well as my own judgment—in other words, we worked together in taking our samples and we first cleaned out the loose dirt and all the loose stuff so as to get solid formation as near as we could.

Q. Virgin ground?

A. Virgin ground.

Mr. BLAIR: I move to strike the answer.

A. (Cont.) Then we would sample it. After we had taken our pans from the side of the pit we would sample it from the top down.

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Mr. BLAIR: I make the same motion.

A. (Cont.) We would take it from the bottom, we would carefully take a small strip across the bottom.

Mr. BLAIR: The same motion, and upon the further ground that the answer is immaterial.

Q. At the risk of repetition, I will ask you to state again, if you have already stated, what the result of the panning on that hole No. 2 was?

A. No colors.

Q. How did you pan this, down on the Nespelem river or the Columbia river?

A. On the Nespelem river.

Q. Now while on the Peabody, what other investigation did you make on that claim for the purpose of ascertaining whether or not it bore gold?

A. We panned some dirt from the sand along the river.

Q. When you say river, please state which?

A. Nespelem river.

A. We also panned some dirt taken next to the clay deposit which crops out along the Nespelem river.

Q. Along the Peabody claim?

A. And which also crops out on the Columbia river to the west—west of the Wickman claim.

Q. With what result?

A. With no result in either case. We also then cleaned out a place in a little coulee or gully that runs down in a somewhat northerly and southerly direction across—a place, a gully or coulee, and we panned some

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dirt from that point. We got no colors in any point on the Peabody placer claim in all of our panning.

Q. Aside from that gully that you cleaned out were there other examinations of ground that you made on the Peabody other than in the river bed, in holes that had been made there before or holes that you made yourself, and where and how?

A. My recollection is—just one minute until I refer to my notes.

Mr. BLAIR: You made that memorandum at that time?

A. Yes, sir, I did. I made this memorandum at the conclusion of the examination of each particular item. We examined three of the pits that we found there—one had been a very small one and may have been a washout. The other examinations were confined to holes that we dug ourselves or from the river. We panned at four different places on the river.

Q. When you say river you mean the Nespelem river?

A. I mean the Nespelem river. Four different places on the Nespelem river—two different places I think on the Nespelem river not in any former improvement, and in two shafts and in one place that might have been a shaft or an improvement and cut.

Q. Now will you look at this map, complainant's exhibit No. 4. Can you say about what point along the Nespelem river with reference perhaps to the distance from the east line you prospected that river in the bottom?

A. We prospected the river bottom along the Nes-

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pelem river at points east and west of a line which would be run due north from corner 7 of the Peabody placer going east and west. I could not give the exact location of each particular panning.

Q. What kind of a bottom has that river?

A. It has a rocky bottom with some sand and gravelly soil with clay on either side.

Q. Is there any depth to the gravel and sand?

A. No great depth, it is boulders principally.

Q. Now give, if you can, approximately, the character of the Nespelem river, its general shape and character from the east line of the Peabody, east, half way down, and down opposite corner No. 7?

A. We measured the fall of the water in the Nespelem river from where the eastern line crosses the river to the mouth of the Columbia—south of the Nespelem where it empties into the Columbia, with two aneroids and these showed a fall of 240 feet. We made an actual measurement of the falls to the point about 600 feet west of the east line of the Peabody, which would be at the end of the last large fall. This we made by actual measurement and it was 175 feet.

Q. That is?

A. That is perpendicularly, the distance the river fell perpendicularly—a distance of 175 feet.

Q. In 600?

A. In 600 feet approximately.

Q. What was the nature of the fall, that general fall?

A. There were several different falls in the river, I don't recall the exact number, from the place where the

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east line crosses to the point where we made our measurement. We took photographs of it and I have the photographs and I depended on them to give you the fall.

Q. What is the nature of the banks where the river traverses at 600 feet?

A. The banks are steep, almost perpendicular in places—an average incline of about 40 degrees incline from the river on either side. We also made a measurement of the flow of the water in the river.

Q. What was it?

A. The river was—we examined this about half way down the claim from the—well say about the center of the Peabody claim on the Nespelem river at a place which according to our estimation would give a minimum flow and we found that the river was 12 feet wide and 10 inches deep. There was a flow of 50 feet in 20 seconds, by two different tests.

Q. By the way, how did you test it?

A. We made two blocks of wood of equal size and width as nearly as we could, measured off 50 feet and Mr. Collier went to one end of the 50 feet and I to the other and he threw in the block and I kept time for that and then we reversed and he kept time for it.

Q. What was the fact as to whether or not at this time the water was at low or high water or otherwise?

A. This was at the lowest period of water that we found on the entire reservation throughout the season, being out through the entire season.

Q. What is the fact as to whether or not at one or

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many places during this—where the river traverses this 600 feet it could be easily dammed up?

A. I hardly know whether it could be easily dammed or not. I presume the water could be very readily converted at various places.

Q. What do you mean by converted?

A. Could be flowed off for power purposes or irrigation purposes.

Q. How could it be very readily carried off for power purposes?

A. Why just the same as they carry it off here at Spokane Falls. There is a good location there to put in a power plant and the water could be reached, the falls are—the fall is great in a short distance.

Q. You mean by reason of the water which was there?

A. Yes, sir.

Q. At what places below could it be utilized?

A. That flow, below on the Peabody placer or the Wickman placer.

Q. Now you said you made some examination on the Columbia river. With this complainant's exhibit No. 4 before you will you state on what part of the Columbia river you made the examination of the shore or ground?

A. Our examination on the Columbia River was confined to locating the lines which showed us that on these claims there was holes between the lines of the Columbia river. We did no panning.

Q. You did no panning there?

A. We did no panning on the Columbia, that is with dirt taken from the Columbia river.

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Q. Calling your attention to that part of the Columbia river which is approximately opposite corners 3 and 4 of the Wickman, I will ask you what is the character of the land between those two boundaries, the line running between corners 3 and 4 of the Wickman?

A. Along there were some sand dunes, which were there at the time of our examination. The part between that line and the Columbia down to where the water had flowed over was entirely sand dunes, then you came into gravel and some sand along the shore of the river. Those sand dunes were perhaps 10 or 12 feet high.

Q. Were those such dunes as might be displaced by the wind or water, or were they permanent?

Q. They were apparently temporary dunes, be blown away and replaced by others.

Q. Shifting?

A. Shifting sands.

Q. Can you indicate on what part of the Peabody placer you made an examination of the ground for gold? I now wish, if you can to avoid marking that plat, but you can use some mark on the paper to identify the point?

A. I should say that our examination of that coulee—

Mr. BLAIR: The question was whether or not you could or could not.

A. Well I can, I think.

Mr. AVERY: Well do it then.

A. The point at which we examined the gully and secured the dirt for panning, on top of the clay, and

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other points outside of the piece, would be about where the word "placer" is written on the plat, being part of the phrase "Peabody placer" on complainant's exhibit No. 4. I could not give the exact location. It was in that vicinity.

Q. It was in that vicinity, in addition to the two shafts that I have already talked to you about?

A. Yes, and in addition to the work along the river.

Q. Now describe this ditch where it passes through the Peabody?

A. This ditch heads off about half way down the falls which I have mentioned as having a fall of 175 feet in 600 feet, and strikes out from the Peabody in a westerly direction.

Q. Is it or not continuous within the confines of the Peabody?

A. It is not.

Q. Wherein is it not?

A. It is broken by the land slide to which I have referred and also by a gully which runs through it and which is perhaps 30 or 40 feet lower than the level of the ditch and that gully was perhaps 300 or 400 feet wide at the top which the ditch would have to cross. There was no evidence there of any flume or any work of that kind having been done for the ditch to cross the gully.

Q. Had there ever been water in the ditch?

A. No evidence of water in the ditch. The dirt was not hard or puddled in any way except as it would be by the rain.

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Q. Could you tell from your examination whether or not it had ever passed the point where the land slide went?

A. There was no evidence of a ditch on the land slide. Whether or not it had been there I could not say.

Q. Describe the ditch in its dimensions as it passed through the Peabody?

A. As it passed through the Peabody it is about three feet wide and three feet deep in places, about two feet wide and three feet deep, and at the western end of it where it runs out of the Peabody into the Wickman, about that point, it diminishes in size and is about a foot wide at the bottom and two feet deep at places and extends on out nearly to the western end of the Wickman claim in that shape, except where broken by the gully.

Q. You say where broken by the gully. You mean that it does not go across the gully?

A. No, the ditch does not extend across the gully although there was one other gully beside the one I have described and that gully I didn't see where.

Q. Was there any trestle or flume or anything by which it ever had passed over the gully?

A. No trestle or flume or any loose lumber of any kind at any of these points.

Q. From your examination of the Peabody placer claim what is your opinion as to whether or not there is any deposit of gold in it?

Mr. BLAIR: I object to the question on the ground

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that the witness has not shown himself competent to give evidence.

A. In my opinion there is no gold to be found on the Peabody placer in quantities which would pay to operate.

Mr. BLAIR: I object to that and move to strike the answer as speculative and also as immaterial.

Q. I now call your attention to the Wickman placer claim as shown on complainant's exhibit No. 4, and I wish you would state to the court how the surface of that ground lies, its topography generally?

A. The Wickman placer is absolutely level with a slight slope toward the north and lies on a bench about eighty feet above the level of the Columbia river.

Q. Is that panhandle up and towards corner No. 1, is that also of a level character?

A. No, that is rough and situated on a slope, I believe, and extended further to the north, that is that point.

Q. Referring you to what is apparently the north-eastern boundary, that is the boundary between corners No. 1 and 2 of the Wickman, I will ask you what is immediately northeast of that line—what is the character of the country?

A. It rises in a bluff northeast.

Q. Precipitous?

A. In some places the incline is greater than others. I should say at an angle of about 45 degrees at the eastern end and along about the center not so great. The western side I don't recall now, but the mountain

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bluff still extends—this road runs right along the foot of the bluff.

Q. Then does the rocky portion of this Wickman placer extend from corner one down as far as opposite corner No. 5?

A. No, the rocky formation is not shown along there. It is covered by silt.

Q. How far does the level character of the Wickman extend up in the panhandle, I am not saying in feet, a half or a quarter or three-quarters, whatever the case may be, the distance?

A. There is perhaps a quarter of a mile from the corner to the west which is covered over about the point where the ditch on exhibit No. 4 crosses the line between these corners two and three on the Peabody placer.

Q. You say the rocky character of this land extends from corner one on the Wickman down to about the point where the ditch crosses the line between corners five and one?

A. No, that land is rough between those points and is not level as it is on the eastern portions of the Wickman. The rocky formation, however, does not show—my recollection is the rocky formation does not show on the Wickman placer claim at any point unless it is at the extreme eastern corner and I don't recollect of it there either.

Q. What kind of a soil is the Wickman placer, what is the nature of it?

A. It is kind of a sandy loam soil, ordinary sage brush land.

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Q. Does that answer apply to approximately all of it or what portion?

A. That applies to approximately all of it. The soil is approximately the same on the rough portion as it is on the other.

Q. Now just about how level is the western portion of the Wickman, if you can state in any language that would convey the idea?

A. Well it is comparatively level. I could not give you the slope.

Q. Now, calling your attention to the Wickman placer and to complainant's exhibit 4 and to that part up in the panhandle which is described as "Improvement One Discovery Shaft", did you see it?

A. I did.

Q. I will ask you if you found that discovery shaft on that claim?

A. I did.

Q. Did you make an examination of it?

A. I did.

Q. Describe this discovery shaft?

A. As I—just wait until I get my notes and I can show. It was a small cut in the side of the hill there and had several holes dug in the ground.

Q. How deep below the—was the lower rim of the hole or the shaft cut?

A. I have not the dimensions of it in my note book; I would have to depend on my recollection. That shaft was cut in the side there, oh say to perhaps 6 feet in

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depth at the farthest end and perhaps six to eight feet cut in the side, it was a small cut.

Q. You say it was six or eight feet and it was cut in about the same distance?

A. Yes, it was cut in the side like.

Q. In what manner did you test the hole, if at all, for the purpose of seeing whether the ground carried gold?

A. Mr. Collier and I both took a pan of dirt from this cut, the same as we took it at other places in the manner already described, and panned it in the Nespelem river.

Q. Did you take undisturbed soil?

A. Yes sir, from the sides and bottom of the hill, as I recall it, or from the back end of the hole where we could get it solid, down to the bottom.

Q. You panned it, did you say?

A. Yes, sir.

Q. With what result as to finding gold?

A. In one pan we found two small colors. The other was a blank.

Q. That is pretty close to the Peabody placer line?

A. That is very close to the line running between corners 2 and 3 of the Peabody placer.

Q. I call your attention now to what is designated on the Wickman placer as "Improvement Two Shaft", up in the extreme west—northwest. Did you find that shaft?

A. I could not state specifically as to that shaft. We

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located a number up in that vicinity, but I didn't describe any—any particular improvement.

Q. Was it at approximately where that appears on the map?

A. Approximately, yes sir.

Q. What was the character of this hole you found there?

A. It was 7 feet by 5 feet in size and about 14 feet deep—12 to 14 feet deep.

Q. What examination did you make of it for the purpose of testing it?

A. I could not state whether it was that particular pit or not. We found 6 different pits of approximately the same size on the Wickman placer and I could not tell from which particular pit now we dug our dirt to pan—out of which particular pit.

Q. Did you take it from all?

A. We took it from 3 different pits.

Q. But you do not recall which pits those were?

A. I don't, except there were of those six.

Q. What did you find, gold?

A. We found no gold.

Q. You sampled them and panned them, the same as you did the others?

A. Yes, sir.

Q. Where were those six?

A. Do you mean the position of—

Q. The three pits from which you took your samples?

A. I could not tell which one of the three it was.

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Q. Can you indicate on this map the three?

A. We took samples from the three pits the farthest to the east that we found. I don't see those pits designated on exhibit No. 4.

Q. Was there anyone up there when you was there?

A. There was a party on the land the last day we were there cleaning and cutting sage brush and piling it, named Bordeaux.

Q. That was on the Wickman?

A. That was on the Peabody placer I think where he was working.

Q. What part of the Peabody placer?

A. The northwestern portion of it where it joins the Wickman, and I think some of the work run over on to the Wickman claim is my recollection of it.

Q. Was there any evidence there of any placer mining ever having been done?

A. There?

Q. I mean independent of those last two pits you spoke of?

A. There was no sluice boxes or evidence of broken sluice boxes, or any of the usual instruments we found at other places on the Columbia river where the Chinamen had been working, or anything that could have been used for any purpose, mining or otherwise.

Q. You have in some of your answers referred to your notes. I will ask you were those notes made at the time that you were there?

A. They were made on the ground at the time of the examination.

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Q. Finally when you got done or after each?

A. After each particular piece of work was accomplished.

Q. What is the fact as to whether those notes indicate correctly the things that they purport to indicate?

A. They indicate correctly everything that is set down.

Q. How wide did you say the land slide was?

A. About 600 feet.

Q. From your examination, from the experience that you had had in testing lands for gold, did you find on either of these claims any indications that they were valuable for placer mining or had any value whatever?

A. I did not.

Mr. BLAIR: I object to the question as already having been answered in substance, and secondly as calling for an opinion of this witness without any proper foundation having been laid to show that he is qualified to answer.

A. I did not.

CROSS EXAMINATION.

By Mr. BLAIR:

Q. When did you go there, Mr. Goodwin?

A. I think it was the 30th or 31st day of August, 1906, on these particular claims.

Q. Where did you go before going to the claims, that is in the immediate vicinity?

A. I went from—let's see—from the mouth of the San Poil river up there.

Q. Where were you coming from, or from where

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were you going to these claims, I mean with reference to the immediate vicinity. Where did you stop the night before?

A. We stopped the night before at an Indian cabin some distance from the Nespelem river—it would be south I guess from the Nespelem river.

Q. What time in the day did you go to the claim?

A. Sometime in the morning, along about 10 o'clock.

Q. Along about 10 o'clock?

A. Yes sir, sometime between 9 and 10, I don't remember.

Q. When did you leave the claims finally?

A. We finally left there the next evening I think it was.

Q. What time?

A. Now I could not give you the time, sometime along in the evening.

Q. Well can you tell approximately?

A. I should say about 5 o'clock approximately.

Q. Why did you fix it at 5 o'clock?

A. Because we didn't go very far that night. We had to camp. I don't recall—I don't think we made the Columbia river that night. I think we had to camp. That is my recollection. We were there altogether less than two days, perhaps a day and a half of another.

Q. How much of the time did you put in on the Peabody?

A. I should say in the neighborhood of three-fourths of the time.

Q. Three-fourths of the time?

Testimony of F. M. Goodwin.

A. Yes, sir.

Q. When did you go on the Wickman?

A. Well we went on the Wickman, the first time, we were running out the lines the first day, but our examination of the Wickman I think was on the morning of the second day and sometime about half past seven in the evening of the first day we went there after we had our supper.

Q. In panning you carried the dirt to the Nespelem?

A. From the Peabody we carried it to the Nespelem. I think all we panned from the Wickman we carried to the Columbia.

Q. Are you clear on that question? Did you carry it to the Nespelem or Columbia from the Wickman?

A. My recollection is we carried it over to the Columbia.

Q. How many hours did you put in on the Wickman there you say?

A. Well probably four hours in working.

Q. On the narrow strip running along the Nespelem to this eastern side, what is the character of that strip?

A. The narrow strip on the southern side of the Wickman you mean?

Q. Yes, sir.

A. That is rough. There is no level land along there at any point that I recall, but at the eastern end it rises up in this rocky bluff with soil on top.

Q. Can you describe it continuously?

A. No, I could not.

Testimony of F. M. Goodwin.

Q. Do you know about the presence of gravel along that narrow strip?

A. There is gravel along the river in certain places, but I could not designate the places.

Q. You said there was some gravel along the river. Where is that located with reference to the river?

A. It would be immediately along the river bank.

Q. It would be—where was it?

A. Well that, as I recall it is the fact.

Q. You have just an indefinite uncertain opinion that there is some gravel there?

A. No, I know this while I could not tell the exact point I know it all along the river, next to the river.

Q. At what point did the rock rise with reference to this lower end where it entered into the claim, about where can you tell approximately?

A. I guess about half would be the way, it would be west of the end of the rock formation—it would be in the neighborhood of a quarter of a mile from the eastern end of the claim.

Q. Aren't you just giving it from your conclusion of it?

A. No, sir. I might say that my recollection is of that. I have no memorandum, but just my general recollection.

Q. Now with reference to corner No. 7 upon complainant's exhibit No. 4?

A. Yes.

Q. From that point down to corner No. 6, being near the Columbia river, and referring to the Peabody pla-

Testimony of F. M. Goodwin.

cer, describe the character of that narrow strip from that point down?

A. There are a couple of different benches there, that is, they are broken off the end of the bluff from the Nespelem river up to the top of the bluff where the line is, that is not as rocky as some of the portion further west as I recall it.

Q. It is not as rocky, what is the character of it approximately?

A. It is a clay loam soil with some brush down to the bottom of the line and perhaps some gravel there. It is a clay loam soil from that point, corner 7, down to corner 6 and rises on two steps. I would not say two steps, but a succession of them or three or four, several steps there and at the bottom brush going to the river or was at that time.

Q. What about the presence of gravel in the river or along the river at that point?

A. I could not say positively.

Q. Was there any gravel in this narrow strip running up from the river to that land?

A. I could not state positively about that. To the best of my recollection there is some gravel there.

A. When you say "some" that is indefinite. What do you mean?

A. I didn't make any memorandum of the gravel there. I could not testify.

Q. You said there was some gravel along the Nespelem river, is that on both sides of the Nespelem?

A. We cleaned the gravel off on both sides of the

Testimony of F. M. Goodwin.

river in our panning. My general recollection is that there was gravel along next to the bluff, but how much or how little or how extensive the deposit was I could not say.

Q. Didn't observe that?

A. No, I didn't make any particular observation of that.

Q. With reference to the Peabody placer, are there any ravines or gullies running through it?

A. There are several gullies.

Q. Several gullies?

A. Yes, that is, gullies in there, not very deep, one good fair sized gully that I recall, according to my recollection of it.

Q. Do you recall but one gully?

A. Several gullies there, but I don't remember the location or size of them.

Q. What was that gully you refer to, what was its cross section?

A. As I recall that gully it showed some gravel on the sides of it and some gravel at the bottom of it and the top portion of it was of a sandy clay loam.

Q. The bottom?

A. No, the top portion.

Q. The top?

A. Yes, sir.

Q. How many pits did you examine on the Peabody, did you say?

A. Three pits, and I recall one which might have been a pit, I don't know whether it was or not.

Testimony of F. M. Goodwin.

Q. What did you find so far as the character of the cross section of these pits is concerned shows?

A. In the one which was termed discovery pit there was gravel at the bottom. The other pits as I recall them was simply soil, without gravel.

Q. As you recall them?

A. Yes, sir.

Q. Is that your recollection?

A. That is my recollection.

Q. There may have been gravel at the bottom?

A. Probably gravel there some place, but I don't recall it.

Q. So far as your present recollection is concerned you are not sure that there was no gravel at the bottom of those, are you?

A. I should say there was no gravel at the bottom of the other pits for the reason that my notes don't show it and I made a note of the other pit. I was very particular to make a memorandum of anything that was there and particularly to show the soil which we found there, but outside of it there might have been gravel there.

Q. There were some features that you omitted to state in your memorandum?

A. Yes.

Q. With reference to the Wickman placer?

A. Features with reference to both of them.

Q. So that the argument you have just stated is not necessarily conclusive?

Testimony of F. M. Goodwin.

A. I particularly described everything that I found there in the way of improvement about it.

Q. But you did pass up certain features?

A. Yes, I didn't make any examination of the extent of the gravel deposit along the Nespelem river.

Q. Why did you pass that up?

A. Because I didn't deem it positively necessary to spend the time examining it. I thought that if the claimants were looking for gold they would find it in their improvements that they had already made. We simply extended it sufficiently I thought for the purpose of seeing if we could find anything for ourselves.

Mr. BLAIR: I move to strike the answer out as not responsive.

Mr. AVERY: I resist the motion.

Mr. BLAIR: I withdraw the motion. I want that answer in.

Q. Did you examine the property in order to determine whether or not it was underlaid by or with a gravel deposit?

A. We examined it for that purpose along the banks of the Nespelem river.

Q. You just stated that you do not recollect the gravel along the Nespelem very well?

A. I do not recall it along the Nespelem river except where we examined it for that purpose.

Q. You examined it then at some places you say along the Nespelem river?

A. Yes, the examination we made was confined to what looked like a strata running along the embank-

Testimony of F. M. Goodwin.

ment, there was apparently a strata of gravel running along there and on top of the clay, which we found existed both on the Nespelem and Columbia rivers. My presumption was, which of course is not evidence perhaps, that it extended underneath both of these claims.

Q. Did you examine the bed of the river, the Nespelem river?

A. Yes sir, we examined it.

Q. Where?

A. Along the Nespelem, approximately north of what is known as corner 7, on exhibit No. 4, of the Peabody placer.

Q. On what side of the stream did you make that examination?

A. Our examination was along the north side of the stream.

Q. Do you know the immediate configuration and flow and direction of flow of the river immediately above that place?

A. No, I could not tell you that. I do not recall whether there was any bend in the river—it was flowing straight at the point we examined it. Whether there was any bend in that immediate vicinity I could not say along on either side of where we examined. I recall that there was a good deal of underbrush and we took the places apparently to pan where we could get at it and examine it.

Q. You examined the bed of the river at that point?

A. Yes, sir.

Q. How many pans did you take there?

Testimony of F. M. Goodwin.

A. Four pans I think.

Q. Two apiece?

A. No, we panned at four different places, six pans, three apiece.

Q. Referring to some of your preliminary testimony, Mr. Goodwin, did you find in your examination of the gold along the Columbia different kinds of gold?

A. No, it was mostly, not only in the places I speak of on the Columbia, but quite a distance from this land we found some small stuff in the shape of nugget gold, but all the other was this small flake or flour gold, very small stuff. We usually had to examine it in the black sand that we found with a microscope to be sure of it. We could see it in the water when it was wet, but when it was dry we could not.

Q. From what point did you start on your trip?

A. We started in a boat right above Peach, right across in the vicinity of Mills we crossed the river.

Q. And what was the result of your trip on the Columbia as showing the presence of gold in that stream?

A. On the Columbia?

Q. Yes?

Mr. AVERY: I object to that as immaterial and incompetent and utterly irrelevant.

A. At various places along the stream we found this small gold, flake or flour gold as it is called.

Q. It went up as high as \$1.60 per cubic yard?

A. At one place it went up something in that vicinity.

Testimony of F. M. Goodwin.

Q. How—another place it went up as high as perhaps \$1.40?

Mr. AVERY: I object to that because the place is not given.

A. I don't recall. There may have been some point that went up to that extent.

Q. As a general fact, in your placer panning along the Columbia you found gold on almost all the bars, did you not in examining them?

Mr. AVERY: I object to that as immaterial and incompetent and irrelevant.

A. We found gold there running from one color in a pan to sometimes as high as twenty in different places. The place where this gold run \$1.60 a yard was not in the middle of the river. It was found a short distance from it.

Q. On a bar?

A. Apparently some former channel of the river.

Q. These colors that you found on the Wickman, were you able to see those with the naked eye?

A. You could barely discern them in the water wet, we examined them with a microscope, that is when they were in the black sand, to distinguish between the black sand and those.

Q. You said you had some little experience in Montana. What was that—in placer mining—was that in placer mining?

A. Yes, I did a little panning over there—it didn't amount to much, a couple—a few days work.

Testimony of F. M. Goodwin.

Q. Were you able to do very good panning before you took this trip?

A. No, I didn't claim to be an expert at that time when I started out on that trip.

Q. Were you an expert when you reached those claims?

A. I think so. I think I could pan that dirt with anybody.

Q. You didn't notice the gold that you lost?

A. I saved gold with some of the most experienced miners, tested it with them—who had been at it for 20 years.

Mr. BLAIR: I move to strike the answer.

Mr. AVERY: I resist the motion.

Q. How long were you occupied in measuring the flow of the river?

A. Well it probably took us an hour.

Q. What day was it that you did that?

A. That was the first day we were there.

Q. Now, Mr. Goodwin, with reference to these dunes that you describe along the Columbia river, were those the action of the winds do you think?

A. In my opinion they were.

Q. Would not be apt to blow any gold into them?

A. Might blow that gold we found into them.

Q. With reference to this man that was cutting sage brush, you don't know for whom he was cutting?

A. Only what he told me.

Q. You don't know what he was doing?

A. He told me what he was doing.

Testimony of F. M. Goodwin.

Q. You are lawyer enough to answer that question?

A. Yes, sir.

Q. You don't know, of your own knowledge, for whom he was cutting that sage brush?

A. I do, of my own knowledge, from his statement.

Mr. BLAIR: Well, let it go at that.

Q. You know, as a lawyer, Mr. Goodwin, that in a situation like this when I have asked a question that I just have, that, as every lawyer knows, that legally you do not know for whom he was cutting that brush?

Mr. AVERY: I object to that as having been answered. I make no objection, however, if counsel wants him to answer the question.

A. I would say of my knowledge, as an attorney, my answer would be competent. If you want an expression of opinion, as an attorney, but at the same time I don't know what purpose that was going to be put to, simply know what he stated. I ask for no better evidence when a man is doing a piece of work why he is doing it than his own statement.

Q. You know, as a lawyer, you would not be competent to testify to that fact.

A. I would not.

Q. Would not be competent to testify upon information that you have—would you be competent to state it on that information?

A. I don't say that is what he was doing it for because I don't know.

Mr. BLAIR: That is all I want.

Testimony of F. M. Goodwin.

A. (Cont.) He told me for whom he was working and the purpose.

Mr. AVERY: I make no objection to answering the question if counsel wants him to answer it.

Q. The water in that river from the dam up there, Mr. Goodwin, could be readily converted for any purpose whatsoever, couldn't it?

A. I believe it could be, yes sir.

Q. When you were working on the Wickman placer, Mr. Goodwin, where was this tunnel that you examined that went down?

A. That was on the Peabody.

Q. Where is that shaft six feed deep, or tunnel 6 feet deep?

A. That shaft to which I referred in the dimensions which I have given, approximately is what is called the discovery pit on the Wickman placer, on complainant's exhibit No. 4.

Q. How did you determine this discovery pit?

A. That is the location of it as we located it.

Q. How did you locate it?

A. By corner No. 2 of the Peabody and corner No. 1 of the Wickman.

Q. How far distant was it from there?

A. By my recollection it was near the line between the Peabody and Wickman and distant about 250 feet, and I think I have a memorandum—200 or more feet from the southeast corner of the Wickman—of the Wickman claim, near the line of the Peabody placer.

Testimony of F. M. Goodwin.

Q. Were there any lode claims near there that you noticed?

A. There was some lode claims there on this bluff to the north.

Q. Running down near there?

A. I didn't examine the lines of them. I don't know how far they did extend, but I know that there was some work being done up there and saw some tunnels. I didn't examine the claim—I didn't know the boundaries.

Q. You think that that discovery shaft and tunnel was on the Wickman?

A. Yes sir, it was on the Wickman.

Q. It was not across the line on the north of the Wickman?

A. No, it was nearer the line, between corners two and three of the Peabody, than the north line of the Wickman.

Q. Were there any other pits or shafts near that?

A. Not that I can recall.

Q. You didn't look for any?

A. Yes, examined both claims for any pit we could find on them. I might have missed some, but I examined it for that purpose.

Q. Now, Mr. Goodwin, where is the location of the six foot tunnel of which you spoke?

A. I cannot recall mentioning any 6 foot tunnel. I mentioned a cut in the bank.

Q. And that was located where?

A. Where I had described on the Wickman placer as being the discovery pit.

Testimony of F. M. Goodwin.

It is agreed between counsel to this action that the testimony herein may be taken in shorthand by E. R. Lindsey and transcribed, and the reading over to the witness and the signing by him of his testimony is hereby expressly waived by both parties.

At this point the hearing was adjourned until 2:00 o'clock p. m., July 13, 1909.

Spokane, Wash., July 13, 1909.

2 o'clock P. M.

Hearing resumed pursuant to adjournment.

F. M. GOODWIN, a witness called on behalf of the complainant, was recalled for further examination.

REDIRECT EXAMINATION.

By MR. AVERY:

Q. Mr. Goodwin, you spoke in your cross examination at some length about a gully, will you state, using the figures of this map, as nearly as possible where that gully extends. I would like to know?

A. The gully as I recall it—I have not the notes showing the exact location.

Q. Give it approximately if you can?

A. Runs in a northerly and southerly direction down into the Peabody placer, beginning in the Wickman placer as I recall it and the ditch crosses it.

Q. Well, about where your finger is on the map there?

A. The ditch crosses it at a short distance east of where it crosses the line into the Wickman placer, as I recall it.

Q. Well then, it runs somewhere above the letters "pla" in placer, is that about it?

Testimony of F. M. Goodwin.

A. I should say that it ran in the vicinity of the figures 1, 5, 2, 2, north and south, but that is only approximate. It might vary a quarter of a mile one way or the other, but that is my recollection of the location.

Q. Have you ever been up and down that river and observed the land there that would grow fruit?

A. I have.

Mr. BLAIR: I object to that as not proper redirect examination.

Mr. AVERY: It is barely possible it is not proper redirect examination and for the purpose of that inquiry and those of its nature I will recall the witness.

Q. Where have you seen that fruit land on the river, Columbia river I mean, of course?

A. I saw that fruit land at Peach and in places north of Peach up as far as Daisy, up in that vicinity is a place called Fruitland and over a little on the Indian reservation north of Daisy, on the west side and south.

Q. These placer claims are on the south half of the Colville Indian Reservation, are they not?

A. They are.

Q. How far from these claims is Peach—about how far?

A. Peach is approximately 50 miles in a direct line I should say.

Q. How far north of Daisy?

A. Daisy is about 30 miles north of Peach, that is approximately, may vary a little.

Q. Do those places and any other places grow fruit—fruit trees?

Testimony of F. M. Goodwin.

A. They do produce fine fruit. There is also a fruit ranch on the Columbia at a ferry 20 or 25 miles from this land, this Wickman and Peabody.

Q. How does this land there, the rocky portion of it, compare with the fruit land that you have spoken of. I mean is it similar or different, what have you to say?

A. It is of a similar nature and about, if anything, a little lower as far as elevation above sea level and situated in about the same relative position as the others are to the river and with reference to mountain bluffs and things of that kind which might affect it on the ground of frost.

Q. Do you know what the lands of the character you have spoken of sell for at Peach and Daisy and other places where it exists along the river?

Mr. BLAIR: I object to that as immaterial and irrelevant.

A. I do.

Q. What?

A. Varies from—oh at that time, from 100 to \$400 per acre, depending upon whether it was developed any or not and had the water on it.

Q. You mean the minimum price was for raw land?

A. Raw land, \$100.

Q. You said you prospected up the Columbia river, on cross examination, or on the Columbia—anyway Mr. Blair asked you about some prospecting that you did on this trip and before you got to the Wickman and Peabody—you recall that, do you?

A. I do.

Testimony of F. M. Goodwin.

Q. How far away from the Wickman and Peabody claims was this prospecting and sampling and examining done?

A. The nearest land to this that we prospected was near the San Poil river, which is probably 25 miles anyway from this land and further by the road, varies from that to 100 miles around by the river.

Q. Where did you make the examination where you said you thought it would go \$1.60 to the pan?

A. That was south of a place called Troy which is across the river from Daisy several miles south of there and is 50 to 60 miles in an air line from these claims and I should say perhaps a hundred miles around the way we had to travel to go there.

Q. You spoke something about in one place using a microscope to discover the colors. I will ask you what is the facts as to whether or not in all of your examinations of gold which you panned you used the microscope?

Mr. BLAIR: I object to that as immaterial.

A. We used a microscope almost constantly in our examination of gravel, examination for colors, to see if we missed any.

Q. You said there was a cabin on these claims when you first went there?

A. Yes, sir.

Q. Was there any one living in that?

A. The cabin apparently was occupied. There was nobody in it at that time, but it was fitted up for occupancy.

Testimony of F. M. Goodwin.

Q. Do you know whether or not this man Bordeau was living there?

A. I could not say.

Q. What was he doing?

A. He was cleaning the sage brush, cutting and piling it at that time.

Q. Where was he doing the work?

Mr. BLAIR: I object to all questions with reference to that on the ground that the defendants are not affected in any way by his presence there.

A. It was in the vicinity of the northwest corner of the Peabody placer.

Q. Do you mean by that near corner 3?

A. No. 3 on complainant's exhibit 4 in that vicinity.

Q. Was it being cleared up well, that is thoroughly?

A. All the sage brush was being cut and piled.

Q. When you were there how much had been cleared in acres?

A. I think there was about 8 or 10 acres cleared at that time. Let us see if I have any notes on that. No I have none.

Q. You said in one of the pits, did you not, that you found some gravel?

A. Yes, sir.

Q. Did you find gravel in more than that instance?

A. Not in the pits.

Mr. BLAIR: I object to this line of examination for the reason that it is not redirect examination.

Mr. AVERY: My impression is, Mr. Blair, that this is redirect. Of course, I may be mistaken. However,

Testimony of F. M. Goodwin.

I will ask permission to ask him that on direct examination as a recalled witness.

Mr. BLAIR: I object to recalling him for that purpose for the reason that it is rather unfair to the defendants after having developed a certain line of case, after the matter has been gone into, for the reason that it is rather unfair after having developed a certain line of defense possibly by cross examination and then allow the witness to testify in chief as to the matters bearing upon that.

Mr. AVERY: If that were true that would be a very excellent reason for him to continue.

Mr. BLAIR: Not necessarily. That is the only question the court would pass upon in determining whether or not you could recall him.

Mr. AVERY: I will ask him to answer the question.
(Question read.)

A. I did not at all.

Q. I believe you answered that slightly different before by saying not in the pits.

A. Not in the pits, yes sir.

Q. The only other place you found it was where?

A. We found gravel in one of the coulees I spoke of and also along the—

Mr. BLAIR: I object to those questions as already having been asked and answered.

A. (Cont.) Along the banks of the Nespelem river.

Mr. AVERY: I am inclined to think that is a fact.
That is all.

Testimony of F. M. Goodwin.

RECROSS EXAMINATION.

By MR. BLAIR:

Q. Do you know of any sales of Peach land at Peach?

A. No, I do not of any sales. I simply know—

Q. Just answer that question.

A. Yes, sir.

Q. Do you know of any sales at Daisy?

A. I do.

Q. What price were those sales at?

A. \$100 per acre for unimproved land.

Q. Who made that sale?

A. That was made by a company here in town. I don't just recall the name. They were selling it at the time I was up there.

Q. Were you present at the sale?

A. No.

Q. How do you know it?

A. I know it from the fact that the parties told me they sold it. I was inquiring.

Q. Did you see that land that was sold?

A. Yes, sir.

Q. Was it specifically described, what was sold?

A. I don't know that I could testify to that. I saw the tract. I could not state.

Q. Were you on the tract?

A. Yes, sir.

Q. Were you on the part that was sold?

A. I could not say.

Q. You don't know which part was sold?

A. No.

Testimony of F. M. Goodwin.

Q. You spoke of Peach and Daisy and Fruitland?

A. Yes, sir.

Q. What side of the river is Peach—by the way Peach is on the south side?

A. The east—south and east.

Q. What we would call the Big Bend side?

A. Yes, sir.

Q. What communication was there from Peach out into the Big Bend, do you know—how do you get there?

A. Haul out with wagons.

Q. What is the nearest railroad connection?

A. Creston.

Q. How far is that away?

A. I think about 18 miles, I am not sure.

Q. Is that land around Peach cultivated?

A. Yes, sir.

Q. How is it inhabited around Peach, do you know?

A. You mean as to thickly populated?

Q. Yes.

A. Fairly well settled. Small ranches there.

Q. Where is Fruitland, is it on the Indian Reservation?

A. No, Fruitland is between Peach and Daisy, about half way up the river I suppose to the first.

Q. On the south side also?

A. That would be on the east side of the river there.

Q. Below the river we would say?

A. Yes, sir.

Q. Where was that fruit ranch about 25 miles from these placers?

Testimony of F. M. Goodwin.

A. That was at one of the ferries there where we crossed. I don't remember the name of the ferry.

Q. At Keller?

A. No, it is a ferry we crossed coming down from Keller on the San Poil. I don't remember the name.

Q. That is a fruit ranch?

A. Yes, sir.

Q. Do you know of any sales other than the one you mentioned?

A. No, that is the only sale I know of.

Q. Now you said that these fruit lands were rather of a similar nature and situated in the same relative position.

A. Yes, sir.

Q. As regards mountains and rivers as the Nespelem placers were?

A. Practically, yes sir.

Q. The other side of the river?

A. On the other side of the river.

Q. When you took that trip with Mr. Collier you found more or less gold continuously on the trip, did you not?

A. Yes, we found colors almost every place that we went. Some few places we didn't find any.

Q. You found many places where—quite a number of places where there had been placer mining done?

Mr. AVERY: I object to that as incompetent, immaterial and irrelevant.

A. We found I think 4 or 5 different places where it was understood the Chinamen had worked it.

Testimony of George W. Comerford.

Q. Places that had been worked out?

A. Yes, had been worked out.

Q. In addition to that you found some working?

Mr. AVERY: I make the same objection.

A. Yes, we found two or three places where they were working.

By Mr. AVERY:

Q. Where were they working?

A. That was on the Columbia river about 50 or 60 miles from these claims in question. I say they were working in part of it—they were prospecting.

Q. Is that in the vicinity of where the Chinese had worked them out you say?

A. These claims were about from 5 to 10 miles from where the Chinese had worked out, north.

Q. That is where they were working was 5 to 10 miles from the old workings of the Chinese, and that was 50 or 60 miles from these placers?

A. From the Wickman and Peabody.

Witness excused.

GEORGE W. COMERFORD, a witness called on the part of the complainant, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. AVERY:

Q. What is your age, Mr. Comerford?

A. 39 years.

Q. You are at the present the chief of the field division of the general land office for this district, are you not?

Testimony of George W. Comerford.

A. I am.

Q. With headquarters in Spokane?

A. In Spokane, yes sir.

Q. And that district covers how many states?

A. Covers the six land districts, four in Washington and two in Idaho, takes the eastern part of Washington and the northern part of Idaho.

Q. Have you had any experience in placer mining?

A. I have.

Q. When did you first commence your experience in placer mining?

A. My first experience stands back in 1896.

Q. Where was that?

A. That was in Colorado.

Q. What experience had you in Colorado and for how long did you have it?

A. Went to Cripple Creek in 1895 to enter the mining business.

Q. To what?

A. To enter the mining business. We had practically no placer, there was only one placer there working so I had little experience there.

Q. How long did you spend in the mining business in Colorado?

A. I was two years in Colorado.

Q. From there did you go to another state or place?

A. I went from there to Nevada and was in Nevada about 3 or 4 months.

Q. Did you do any mining there?

A. I done some prospecting there, went there for the

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purpose of mining and seeing what the Gold Creek Nevada Mining Company had a placer field.

Q. Do you mean that you were reporting or something?

A. For myself and two or three others only.

Q. After that where did you go?

A. In 1898 I went to Dawson, Yukon Territory.

Q. For what purpose?

A. To take charge of placer mines for a New York syndicate.

Q. How long were you there mining in Alaska?

A. I was in Alaska a little less than 7 years.

Q. Continuously in mining?

A. That was the business, yes, in the mining season, in the open season.

Q. Was your experience such, Mr. Comerford, that you know as well as the ordinary man who has experience can know placer ground?

Mr. BLAIR: I object to that question as calling for a conclusion of the witness and requiring him to answer a matter that is for the court to try as a conclusion from the facts to be adduced by this witness and on which he is now testifying.

A. Yes, sir.

Q. Well, may be I can get at it a little more from a practical standpoint.

Q. How much, if you can give any approximate statement—how much placer gold have you mined, directly and indirectly?

A. There has been taken under my direction and

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supervision, personal direction and supervision, approximately \$300,000. Part of that was taken out in the Dawson country and part in the Nome country. In going into Alaska in 1898 I prospected, and along the different streams from the headwaters of the Yukon to Dawson. At Dawson I took charge of the company's properties consisting of a claim on Bonanza Creek and one piece across, in the Alaska country on Dominion Creek and Gold Bottom Creek. In the Bonanza I had layman work as well. I had to keep track of the men there and check them up and see that they were not leaving any pay dirt behind and also to protect the interests of the company that I represented. The same statement is true of the property on Gold Bottom and the Dominion property and I worked a crew of men by myself and panned and tested ground and conducted general mining there until I quit the company in 1900. During that time I was panning daily and my expenses in the operation of the company for six months there was in the neighborhood of \$40,000.

Mr. BLAIR: I move to strike the answer as not responsive.

Q. Now, I will ask you if you have ever been on the Wickman and the Peabody claims as represented on complainant's exhibit No. 4?

A. I have, yes sir.

Q. Being the claims involved in this case?

A. Yes, sir.

Q. When were you on them?

A. The first time, April 17th, 1909. That day I went

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down and I identified the corner to the Peabody claim—located the United States mineral monument No. 1, and went generally over the two claims in a general way. I returned to the claims the following day and the day following that, both for the purpose of making practical tests of the ground and a general examination.

Q. I wish you would state what you did there for the purpose of ascertaining whether these claims carried any gold?

A. I started in Sunday morning, the 18th, from the—

Q. Of April?

A. April, this year, yes sir,—from the northwest corner of the Wickman placer.

Q. What corner is that on the drawing?

A. No. 2 on the Wickman.

Q. All right.

A. Northeast corner, and prospected the shaft and holes that I found on the Wickman placer.

Q. State in this connection what shafts and holes you found?

A. There was the first hole post about the position of improvement No. 2 as shown upon this plat. I will say that I had a tracing of the original plat of the Wickman and Peabody with me that I had made from the plat on file in the local land office at Waterville.

Q. Was it such a plat as you now have before you in exhibit No. 4?

A. No, this is a combined plat of the two claims while the claims are platted for patenting purposes individually.

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Q. Well, referring to improvement two shaft on the Wickman—what did you find if anything there?

A. I made notes. I will state that my notes only consist of the depth of the holes, that is the only notes I took because I could not keep track of the different holes as to depth. I found a shaft there 7 feet by 8 feet by 9 feet.

Mr. BLAIR: Which one is that?

A. It lay to the northwest of the end of the ditch, improvement 2 on the plat. The whole is in a coulee or gully, some clay, a little, very little gravel, that is sand, not gravel at all, but sand. I prospected the shaft for the 9 feet by scraping down the sides after cleaning off the face, having a gold pan at the bottom and scraping into the pan and mixing the dirt, sampled it, then, taking out of each pan approximately two double handfuls of dirt. I sampled the shaft the entire 9 feet that way. Then I had with me —

Mr. BLAIR: 9 feet down?

Testimony of George W. Comerford.

A. 9 feet down, yes sir. I had with me a post auger.

Q. A post hole auger?

A. Yes sir, about 8 inch bore I think—that is right, an 8 inch bore, and I bored into the bottom of that shaft 6 feet and 8 inches and sampled that 6 feet and 8 inches as I went down. All the dirt I sacked and carried with me. Working east and a trifle to the north of that I sampled another shaft. That shaft was 9 feet and 6 inches deep, good walls and bored three 5 feet and 6 inches in the bottom of the shaft and sampled each and

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every other shaft similarly. A trifle eastward and south of the line shown as improvement No. 3 or ditch I found another shaft. That shaft was in a bad shape and caved in to a certain extent, and sampled, well as far down as the bottom, and dug down in the waste that had fallen in and put the auger below 7 feet in the bottom of the hole.

Traveling still eastward and south of the line indicating the ditch I sampled another shaft. This shaft was in very bad condition. I sampled the walls of the shaft to the depth I could and I bored down close to the wall and right under the cribbing that was there.

Q. Do you remember how far you went down?

A. I remember the cribbing was nine feet and the auger hole was four feet below the cribbing. These notes were all made instantly at the time of doing the work. Working eastward a little yet—

Mr. BLAIR: Now describe the cribbing—describe what you mean by cribbing?

A. The cribbing is, with reference to this hole, boards that were put there to retain the walls and assist the walls, it is the timber that was put in. Working southwest from the point marked on exhibit No. 4 as being corner No. 5 of the Wickman, and No. 3 of the Peabody, there is indication of a shaft having been sunk there, but it was caved in and impossible to prospect it. By the side of this shaft I sunk then an 8 inch auger hole to a depth of 8 feet and prospected and sampled each six or eight inches as I went down.

In close proximity was another hole that was caved

in that I sunk an auger hole in to a depth of 8 feet and prospected it the same as the other. In the vicinity of improvement No. 1 of the Peabody I found two holes there side by side. They were 12 feet and 13 feet down. I prospected them to that depth.

Q. How did you prospect them?

A. From the walls, and from the—I didn't sink the auger hole very deep there as it went against the rock and I think I will stop there.

Q. Did you sink it to the rock?

A. Yes, sir. Then in the vicinity of improvement No. 2 I found—

Q. On what claim?

A. On the Peabody. There is a shaft there that was badly caved in and impossible to get into, but the dirt thrown out of the shaft was on the rim of the shaft and I sampled the dump of the shaft and also at another point not far from there and a little south of that there is another shaft there that was caved in and I sampled the dump of that shaft.

Q. What did you do with the dirt or stuff that you took out of these places? How did you test them and how did you sample them?

A. The dirt taken out of the shaft that time I sacked in two gunny sacks and loaded it on a couple of ponies that I had there and took it over to the camp there and took them down from the camp and I washed the dirt by panning at the Columbia river, saving the concentrate we found that might be in the dirt. The dirt taken from the vicinity of corners 3 and 5 of the Wickman and Peabody we took to the Nespelem river. That was also

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sacked and hauled over there in a buggy and I panned that and washed it out in the Nespelem river.

Q. What did you find?

A. I found some—very little, black sand, but nothing, no showing, no gold whatever visible to the naked eye from all the dirt taken from the Wickman placer, and no gold visible to the naked eye taken from the Peabody placer with the exception of the dirt taken from the shaft nearest—from the bottom of the shaft nearest to the Nespelem river. There I saw one color, but it was so small that I can only describe it by saying that it was about as small as the smallest dot that you could make by touching your pencil point.

Mr. BLAIR: No gold visible to the naked eye from the Wickman?

A. None whatever. That one color was the only gold that I saw taken in any of my prospecting over there on the claims.

Q. Did you use the best method and the best effort that your experience suggested to ascertain whether or not there was gold on those claims?

Mr. BLAIR: I object to the question as immaterial, whether or not he did is a matter to be decided, but not in detail and not his conclusion as a witness.

A. I did, and I used extraordinary care in panning and in sampling, the samples that were taken.

Mr. BLAIR: I move to strike the answer.

Q. Now further test of the ground there, you say, did you make any concentrates?

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A. I saved all the concentrates from my pannings and put them into a jar I had, keeping the 3 samples, kept the samples separate, and brought them all with me to Spokane.

Q. Did you number them?

A. I did, yes sir.

Q. How did you number them?

A. 1, 2 and 3.

Q. How much for instance of your original dirt was concentrated into sample No. 1, how many pounds?

A. About 180 pounds of dirt constituted sample No. 1 of concentrates,—was concentrated into one sample.

Q. How many pounds of original dirt did you concentrate into sample No. 2?

A. There is between 140 and 150 pounds of dirt concentrated into that sample.

Q. And how much dirt did you concentrate into sample No. 3?

A. From 65 to 70 pounds.

Q. What did you do with those samples which you say you numbered 1, 2 and 3?

A. I delivered them to Mr. Webster.

Q. M. F. Webster?

A. M. F. Webster, for the purpose of making an assay and ascertaining the value of the concentrates.

Q. He is connected with C. M. Fassett's assaying establishment in the city?

A. I found him there in charge, yes sir.

Q. Now I wish you would state the character generally of the Wickman placer claim, I mean by this, Mr.

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Comerford, state what kind of soil it is and its topography?

A. It is a loam soil to the depth of 16 feet that I prospected it. Panning where I have given and that depth as testified there was no gravel or wash gravel or anything of a gravelly nature about that,—it is a soil containing some clay as shown by the wash, showed up in the washing of the dirt. The land is practically level, having proper drainage for—and on the north it runs very near, practically up to the foothills or where the high land is to the west; on the line between corners 3 and—is along the upper bank on the Columbia, it is on a bench there, but I should say from 70 to 90 feet above ordinary water of the Columbia river.

Q. Do you mean to say that the substantial part of the Wickman is between 70 and 90 feet above the Columbia?

A. Yes, sir.

Q. At what stage of water?

A. Ordinary water. The Columbia—I have seen the Columbia higher than it was when I was there and lower. I think it was about the average water at that time.

Q. I will ask you that same question in respect to the Peabody placer?

A. The western portion of the Peabody is very similar to that of the Wickman placer. The eastern portion sloping stronger to the Nespelem river up to a point about corner No. 2 as marked on complainant's exhibit No. 4. It is not a gradual slope. It does not slope very strongly to the south—until you get pretty close to the

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river. Then it breaks off into quite a heavy, steep slope.

Q. Did you find a ditch on the northerly part of the two claims?

A. I did, yes sir.

Q. I wish you would describe that ditch?

A. The ditch was just a ditch put in the sand—a very crude affair,—had all the appearance of just being put in hurriedly and cheaply. There was no indication of water having passed through it. There was no sediment in the bottom there or old water in the bottom of the ditch.

Q. What if any outlet did it have?

A. It ended right in the ground without any outlet at all.

Q. What if any inlet did it have?

A. The ditch could be spoken of in two parts. The ditch on the east part of the Peabody is a ditch there by itself. Then there is a large break in the ditch showing that it would be impossible for the water to pass through the ditch, into the ditch in its present state, showing the separation of the ditch in two parts,—not having been connected up whatever.

Q. Was the eastern end of the ditch connected with the water, any water,—well in such a way that water could be thrown in?

A. There was no indication of water in it, but water could have been turned into that part of it there with very little trouble.

Q. By further excavation?

A. It might have taken just a little there or to open

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the dam. They had practically two ditches there. The ditch they originally put in was broken by weather conditions a great deal.

Q. Just confine yourself, if you please, to the ditch that was originally put in. What I want to know is the one ditch that appears here. Describe that ditch first?

A. That ditch is not connected up.

Q. Where is the easterly end of the ditch, in the sand or rock?

A. In the rock up there on that side right by the Nespelem river.

Q. How far from the water is it?

A. They might possibly be able to turn the water in,—I didn't go clear up to the ditch, however, I crossed over that and could see the ditch from the other side. I came down over the broken part to where the ditch run out.

Q. How had this ditch, in its general direction, did it have occasion to pass gullies or anything?

A. Yes, there is a place there where it was impossible to take it over.

Q. Was it disconnected or flumed?

A. It was disconnected, where it came to this gully it ended entirely.

Q. Did you find a dam up there near the eastern end of the ditch?

A. There is an obstruction put in. I didn't go clear to it, but it shows an obstruction along, shows the edge or face of the ground, but I didn't go clear to it.

Q. Describe the Nespelem river or that portion of it

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which passes over the Peabody claim and ends at the east end of the claim?

A. At the east end, the Nespelem there is, just west of the east end is a heavy fall on the Nespelem and from there down to in the vicinity of the letter "C" in corner No. 2 it is a heavy fall, but the abrupt fall is right close to the east line.

Q. Did you take any photographs of the gorge while you were up there at the time you mention?

A. I did, yes sir.

Q. (showing paper) I will ask you if those are the 'photos that you took?

A. Yes, sir; those are.

Q. Well, I wish you would state about where they were taken from?

A. Those were taken from a point on the Nespelem just about 300 feet or such a matter west of the east line. I was standing on the southside of the river at the time I took them.

Q. And did you move down the river somewhat in taking each one?

A. Two views I took of the falls there, were taken, three views were taken practically in the same place only raising my elevation up the bank of the river going up the bank in following down the stream.

Mr. AVERY: Now I am going to offer these in evidence, Mr. Blair, and then I am going to ask him more definitely about them.

Mr. BLAIR: I object to them on the ground that they

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are irrelevant and immaterial to any of the issues being investigated in this case.

Mr. AVERY: I will ask that they be marked complainant's exhibits Nos. 5, 6, 7, 8, and 9.

Exhibits so marked.

Q. Calling your attention to exhibit No. 5, I ask you if that represents the appearance of the gorge from the spot where it was taken?

A. It does. This was taken at an elevation of about 20 feet above the water of the Nespelem and approximately 300 feet down the Nespelem from the falls.

Q. Now, I will ask you if in that photograph you are looking east?

A. I am looking east, yes sir.

Q. I call your attention to exhibit 6 and ask you if that represents the Nespelem gorge and from what point it represents it?

A. It does, and taken from almost the same spot, just a little elevated up.

Q. Looking east?

A. Looking east.

Q. I call your attention to exhibit 7 and ask you if that represents the gorge of the Nespelem taken from a point slightly further west?

A. This was taken a little further south and a little higher up the bank for the purpose of showing the water that came down.

Q. Where it divided?

A. In exhibit No. 5 you will see a boulder in the water around which the water is passing to the left,—if you

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will look you will see it, passing to the left as we look at it, the river running to the left as we look at it. You will also see a little shoot of water passing to the right of the picture. Exhibit No. 7 shows the water coming from the right and the two pictures show the flow of the water coming down through the gorge, the two taken together.

Q. They were taken about the same distance west?

A. Yes, practically.

Q. I call your attention to exhibit 8 which seems to be considerably different, is that a photograph showing the gorge at a point further west?

A. This shows the gorge considerably further down. There is what is known as three falls in this river inside of the boundaries of the Peabody placer and exhibit 8 shows the other two falls.

Q. Looking east?

A. Looking east, yes sir.

Q. I call your attention to exhibit No. 9. Is that a different view of the same falls as shown in No. 8?

A. Yes, the same falls shown in exhibit 8, only taken from a little changed position.

Q. Now I wish you would describe that gorge generally?

A. The gorge is an abrupt one confined between solid walls for a distance of 200—very close to 300 feet and from the—there is a little fall there, that is where I crossed the river and there is also a little excavation there as though some one had excavated for the purpose of laying timbers for a foundation.

Mr. BLAIR: Describe that there.

Testimony of George W. Comerford.

A. At that point?

Q. Yes.

A. Well, it is some place right close I should assume, but I can only just approximate it, something like that, right in there (indicating) right on the south side of the river at that point.

Mr. AVERY: I suppose that is the south—he indicates Mr. Blair, about an inch or an inch and a quarter on the north side of the river west of the east line of the claim.
By Mr. AVERY:

Q. Now go ahead?

A. The bank opposite that rises quite steep and then following down the river from those points it gradually opens out more level, but the river confines itself down considerably below the level of the ground on the west there.

Q. What is the character of this part of the Peabody on the south side of the Nespelem?

A. That is, for a portion, it is a hill standing about 45 degrees and gradually runs out into a flat, a flat corresponding there similar to the Wickman and extends on up the Columbia. South side. The north side of the river is more abrupt and broken. There are some clay banks through there which are broken up a little.

Q. Is there any indication on that claim or either of these claims that they are valuable for placer mining or have valuable deposits or any deposits of gold?

Mr. BLAIR: I object to the witness answering the question for the reason that what is involved in the question has all been testified to by this witness and for the

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reason that it calls upon him to draw a conclusion that the court must draw from the facts that have been testified to.

A. There is no indication of any condition that would lead a person to believe that the land contained a deposit of gold, placer gold.

Mr. BLAIR: I move to strike the answer out for the reason just stated in the objection.

Q. Did you tell me that you saw sluice boxes down on there somewhere?

A. I saw sluice boxes laying out on the ground beside the river on the north side of the river and on the easterly portion of the Peabody placer.

Q. Was it in use?

A. No.

Q. Was there any indication of any kind, and if so state what it was, that there was any mining going on there?

Mr. BLAIR: I make the objection just before made.

A. There had been no mining ever taken place on these claims of any kind.

Q. I refer to either of the claims?

A. On either of the claims, that is to be called mining at all.

Q. What was the nature of the bottom of the Nespelem river where it passes through the Peabody?

A. It is a rocky bottom, boulders, and had some loose sand deposited there with the boulders along there, but it is a rocky bottom.

Testimony of George W. Comerford.

CROSS EXAMINATION.

By Mr. BLAIR:

Q. You went over on Sunday morning, what time?

A. Must have been about 9 o'clock or half past nine when I got down there that morning.

Q. Were you alone?

A. No. I had a driver.

Q. So far as this work was concerned you were alone?

A. So far as doing the work?

Q. Yes.

A. Well, I had the driver assist me in such things as getting in and out the holes and helping me raise the sacks of dirt from the holes. He had nothing to do with the examining of the ground.

Q. Just tell me again how you collected that dirt, just shortly?

A. By taking down the sides of the wall and catching it in a gold pan below and I mixed the dirt all up and shook the pan and took two big double handfuls first and then mixed the dirt that was in the pan and sampled it again by taking a double handful from that and continued that right straight through the sampling, that method, taking about one-fourth of the dirt in the pan, of each, pan—or probably one-third or one-fourth.

Q. You were just there that one day, Sunday?

A. No, I was there Monday.

Q. What part of Monday?

A. Came down early Monday morning and worked until about 5 o'clock—3 o'clock and got disgusted and went home.

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Q. Why were you disgusted?

A. I would like to find some showing when I start, a little showing, but the condition of the soil and the place was such that any person that had experience as an observing man would never look for gold there.

Q. You have—have you completed your explanation?

A. I have, yes.

Q. You think it is impossible to find gold on the property, on that portion?

A. I would not be surprised but a man might find colors at a favorable—might find on the rim of the rock along the Nespelem, that is the position where I saw the sluice boxes a man might go there and find some colors, because it was the most favorable spot.

Q. You didn't pan there?

A. No, sir.

Q. Didn't pan along the stream?

A. No, sir.

Q. Why not?

A. I was looking for gold where they had made development, and where they had claimed development, taking their word for discovering it where they hit it.

Q. You didn't examine the Nespelem in any way whatever?

A. No.

Q. You got out \$300,000 worth of gold approximately, where did you take that out, in the Alaska country?

A. Part of it at Dawson.

Q. What was the nature of the gold there?

A. As to—?

Testimony of George W. Comerford.

Q. Do you know anything about the Columbia river gold, the nature of it?

A. Yes, I panned along the Columbia at different places, I have tested the ground along the Columbia and on the south half here and also along the Snake river.

Q. Now the Snake and Columbia as a rule they have the same kind of gold, don't they, that flour gold?

A. Yes, it is very light all of it.

Q. There are places along both rivers where you can run across some flake gold, don't you?

A. Yes.

Q. And that is true of the Snake and Columbia also?

A. Yes, sir. Almost all places along the Columbia a person may find a speck.

Q. Well, it is true isn't it, Mr. Comerford, that up the river from there and down the river also there has been in past years a good deal of placer mining?

A. Yes, I have went across the Columbia at—I have been to Bridgeport on the Columbia, that is a considerable distance from this land, and then I have been at the mouth of the San Poil and up the Columbia opposite Jerome. That is the portion of the country I am familiar with, over there, and also up the San Poil river on the south half. I have tested that up there a few times.

Q. Did you pan the discovery hole of the Wickman?

A. I panned from a hole that lay in that direction and that locality from the end of the ditch and from corner No. 2 I tried out there and I panned from a hole in that section. There was no mark there to indicate that it was known as a discovery hole. The only thing I had was a

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map that said it was a discovery hole and it was the hole that was there.

Q. You didn't pan in any of the ravines?

A. No.

Q. Didn't pan on the south side of the Nespelem?

A. No, only the one side.

REDIRECT EXAMINATION.

By Mr. AVERY:

Q. There was a subject that I wanted to recall the witness on, there were two subjects and one of them was, —I call your attention to that part of the territory here between the Wickman and the Columbia river and ask you the character of that land?

A. Well, the land between a line from corner 3 and corner 4 of the Wickman to the Columbia, that is broken off where the land slopes to the Columbia river at places abruptly and the break is irregular. At the bottom of the line and near what is shown here as the water line, of the Columbia, would be a favorable spot to look for gold along the Columbia in my experience.

Q. How about—was it sand or gravel or dirt or clay or what?

A. It is some clay and sand until you get down—but this is dirt that the winds have blown around and swept off.

Q. Shifting sands, aren't they?

A. Some days and similar to the ground above, shown above.

Q. Light or heavy?

A. Light until you get—

Testimony of George W. Comerford.

Mr. BLAIR: I object to this as immaterial.

A. (Cont.) Until you get to the high water line of the Columbia, there you find rocks and stuff that has been thrown there by the Columbia.

Q. What is the character of the gorge that you have described and shown pictures of. Is it of a character so that the water could be impounded up there, impounded for purposes of diversion, diverting it to a lower place on the river?

A. Yes, they have already started a ditch there to take the water out from a high level, from this foundation that I spoke of, this excavation for a foundation to the level of the ditch as it leaves the water at the head of the falls I estimate it to be about 140 feet. I had only just my eye and estimated by carrying it out.

Q. You just now mentioned a ditch, that is not, I take it, the ditch that you first answered concerning?

A. No that was a ditch I considered was being taken out for the purpose of bringing the water for power purposes, as it would give the greatest fall and it would not be necessary to divert the water at that point for the purpose of bringing the water out to sluice this ground or to hydraulic it even.

Mr. BLAIR: I move to strike the answer out as not being responsive, and irrelevant and immaterial, and as merely a conclusion upon his part.

Mr. AVERY: I resist the motion.

Mr. BLAIR: That is all.

Mr. AVERY: I have no more questions.

Witness excused.

Testimony of M. F. Webster.

M. F. WEBSTER, a witness called on the part of the complainant, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. AVERY:

Q. Mr. Webster, you reside in this city, do you not?

A. Yes, sir.

Q. And are an assayer?

A. Yes, sir.

Q. In charge of or employed by the assaying establishment of Mr. Fassett?

A. Yes, sir.

Q. What is the name of that concern?

A. C. M. Fassett & Co.

Q. What is their business?

A. Assaying and chemistry.

Q. You have had experience in this character of work, have you?

A. Yes, sir.

Q. For how long?

A. 16 or 17 years.

Q. Are you and were you in charge of the Fassett & Co. assaying establishment sometime about the last of April of this year?

A. Yes, sir.

Q. Do you know Mr. Comerford who has just left the witness stand.

A. Yes, sir.

Q. Do you remember about that time his coming to you with some samples?

A. Yes, sir.

Testimony of M. F. Webster.

Q. I will ask you if there were any identification marks on these samples?

A. They were numbered.

Q. Numbered, how were they numbered?

A. Nos. 1, 2 and 3.

Q. I will ask you if you assayed and tested those samples first to see what they contained, if any gold?

A. Yes, I did.

Q. What did they appear to be, those samples, in material?

A. They were mostly composed of black sand, practically all.

Q. Can you tell how much the sample No. 1 weighed?

A. I have a record of it. Sample No. 1 weighed 548 grains.

Q. Do you know what part of a ton avoirdupois that was?

A. I was asked to figure out the weight and value in dollars of each of those samples. No. 1 sample in an expression of avoirdupois tons was .0000391 parts of a ton.

Q. Part of a ton?

A. Part of a ton avoirdupois.

Q. How much in value did you find that to be in gold?

A. .000024 parts of a dollar.

Q. How about sample No. 2?

A. Sample No. 2 as given to me weighed 738 grains or .0000527 parts of a ton avoirdupois.

Q. And you found in there gold value amounting to how much?

Testimony of M. F. Webster.

A. .000065 parts of a dollar.

Q. And referring to sample 3, what weight did you find that to be?

A. Sample No. 3 weighed 561.4 grains which was .00000428 parts of a ton avoirdupois.

Q. And in gold value, in gold how much?

A. .000049 parts of a dollar.

Q. Can you tell me, Mr. Webster, referring to sample No. 1, if that sample represented the concentrates from 180 pounds, how much gold would there be in a ton?

A. There would be approximately 10 times the figures I gave in portion of a dollar,—a little over.

Q. Can you tell how much gold there would be in a ton?

A. There would be approximately .000226 parts of a dollar.

Q. Referring to sample No. 2, and assuming it to have been the concentrates of 140 pounds of dirt, how much would such dirt go in gold to the ton?

A. Approximately 14 or 15 times the figure I gave you,—.000065 parts of a dollar,—140 pounds you say that represented?

Q. 140 pounds it represented.

A. .00091 parts of a dollar.

Q. Now assuming contents of sample No. 3, was the concentrates from 65 pounds of dirt, what would that quantity of dirt go in gold to the ton?

A. .00147 parts of a dollar.

Mr. BLAIR: I have no question.

Witness excused.

Testimony of G. S. Wickman.

Mr. AVERY: With our stipulation in the former hearing in, with that understanding we will rest.

G. S. WICKMAN, a witness called on the part of the defense was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. State your name?

A. G. S. Wickman.

Q. Where is your residence?

A. Winnipeg, Manitoba.

Q. What is your present occupation?

A. Packer, in the packing house business.

Q. Your age?

A. 45 years.

Q. You are familiar with the ground included in the Wickman and Peabody placers, being the placers in litigation in this case?

A. Yes, sir.

Q. You know generally their outline upon the ground?

A. In a general way, yes sir.

Q. You have been upon them?

A. Yes, sir.

Q. Will you state, Mr. Wickman, when you first visited the placers in question?

A. I think the first time I was there was in 1893.

Q. In 1893 or 1903?

A. 1903.

Q. Will you state your purpose for going on there at that time?

A. I went there to look over the proposition.

Testimony of G. S. Wickman.

Q. You are an officer of the Multnomah Co.?

A. Yes, sir.

Q. Were you at that time?

A. Yes, sir.

Q. You were a stock holder at that time?

A. Yes, sir.

Q. And the Multnomah Co. owned other propositions there than these placers at that time?

A. Yes, sir.

Q. Of what did they consist?

Mr. AVERY: I object to that as immaterial and incompetent and irrelevant.

Q. Were they placers or lode?

A. They were both placer and lode claims.

Q. Other than these two?

A. No placers beside these two, no sir.

Q. Where were the lode claims located generally?

Mr. AVERY: I object to that as immaterial, incompetent and irrelevant.

A. Their location was in the hills on clear to the north of the placer grounds.

Q. Near the Nespelem?

A. Yes, sir.

Q. That is the town of Nespelem?

A. Near the town of Nespelem.

Q. Now when you went there in 1903 did you go upon the placers?

A. Yes, sir.

Q. And what did you do—and what time of the year was that?

A. I think it was in June, sometime around there.

Q. June, 1903?

A. Yes, I think it was in June.

Q. And what did you do on that visit to the placers?

A. We went over the placers thoroughly.

Q. With whom?

A. We—there were Mr. Early and Mr. Peabody and Dr. Hudnutt and another man I don't know—I don't know his name, and myself, a miner that was with us.

Q. Did you go over the Peabody and Wickman placers at that time?

A. Yes, sir.

Q. When you say you went over, what do you mean?

A. We went around in various places on the ground and took out dirt and carried it to the river and panned it.

Q. With what result, Mr. Wickman, in point of finding gold?

Mr. AVERY: I object to that as the witness has not shown himself competent to answer.

A. We prospected first on the Peabody placer and I took some gravel at that time back along near the Nespelem river and we took it over to the river and panned it, panned it down, Mr. Early and myself.

Q. What did you find if anything?

A. We found in the pan,—I could not say how many pieces of colors of gold, but there was quite a string of it in the pan, perhaps an inch and a half long.

Q. Did you personally do any part of that panning?

A. I panned it down partially and Mr. Early finished it.

Testimony of G. S. Wickman.

Q. Now did you do any other panning on the occasion of that visit?

A. Yes, I worked there all day that day and took gravel from various places.

Q. On the Peabody?

A. On the Peabody and the Wickman.

Q. Did you take any along the stream?

A. Yes, sir.

Q. Of the Nespelem?

A. Yes, sir.

Q. Do you recall the length of time you spent on the Peabody placer at that time?

A. I could not say just how much time on the Peabody, but we were there from 9 to 10 hours on the ground.

Q. Can you state where you panned on the Peabody?

A. We panned at various places along the Nespelem river.

Q. Well, first with relation to this narrow strip south of the Nespelem river, on the Peabody, on what point of the strip?

A. We did not do any panning that day on the south side of the river.

Q. On the north side?

A. On the north side we panned from, I should judge, half a mile up the river all the way along down to a little inlet here or bay on the Columbia river.

Q. Half a mile from where the Nespelem empties into the Columbia?

A. I should judge approximately a half a mile to the river.

Testimony of G. S. Wickman.

Q. And from that point down, you say is that it?

A. Yes, sir.

Q. You panned?

A. Yes, sir.

Q. On the north side?

A. On the north side—on the left hand side as you look at the Nespelem river. I don't know which way it is.

Q. And did you, on that same day, do any panning on the Peabody placer away from the bank?

A. Yes, sir.

Q. And where?

A. At various places where they had holes sunk, I could not just say where they were, but different places on the Peabody placer where they had sunk holes and also in a gully that run all through the Peabody placer.

Q. What was the result in those cases in point of finding?

A. We found gold in several pans. I could not say how many.

Q. What was the result with reference to the pans that was taken along the banks of the Nespelem river?

A. Well I don't remember of seeing a blank pan along there, not a pan but what we could see gold in.

Q. Do you recall the number of pans that you took on the Peabody placer away from the river?

A. I could not say, no sir.

Q. Do you recall the blanks that you saw?

Q. Or the number of pans in which you found gold?

A. No, sir.

Q. State if you can the number of colors found in

Testimony of G. S. Wickman.

those pannings that you did along the banks of the river or the character of gold found?

Mr. AVERY: I want to object to your asking him that on two grounds, that it is incompetent to ask a witness a question of this character on the ground that he is not competent, has not shown himself qualified to testify on this subject.

A. I could not say except the color of it, but the quantity we found from 2 to 15 colors in a pan.

Q. State if you can recall whether or not away from the river the greater number of pans contained gold?

A. It is my recollection that they did, yes sir.

Q. Now, Mr. Wickman, with reference to the Peabody placer can you describe the topography of that along the narrow strip to the south of the river?

A. That is along on the south side of the Nespelem river?

Q. Yes, that narrow strip?

A. There is quite a high bank there.

Q. Beginning with the falls that have been testified to heretofore and going down towards the Columbia river, describe it in that way.

A. My recollection is right at the falls it is rocky.

Q. How far down below the falls does that continue—do you know the nature of the rocks?

A. I do not.

Q. How far does that rock continue below the falls on that side?

A. Why I should judge a hundred yards or 200 yards perhaps. I could not state just the distance.

Testimony of G. S. Wickman.

Q. Generally from that point you have just referred to down to the Columbia river, what is the height of the bank on that side of the strip above the river?

A. I should say it run from 15 to 50 or 60 feet. Different heights in different places.

Q. What is the nature of that bank with relation to condition,—sandy, gravelly or clay—give the nature?

A. As we got down near the Columbia river there we found a big bank of gravel in there.

Q. Do you know the height of that gravel from the Nespelem river?

A. I could not say, no sir.

Q. Now, Mr. Wickman, with reference to the panning that you took from the surface of the Peabody place, away from the river, state what portion of the placers those pans covered?

Mr. AVERY: I object to that if I understand the question it is already answered. I may not understand the meaning of the question.

A. I could not say how many places we panned at. We panned in various places around where the discovery holes were and in the gully that went up through there.

Q. Do you know where the discovery hole is on the Peabody?

A. I do not. I could not identify the discovery hole. No. I could not tell just where it is.

Q. Did you pan any hole called a discovery hole?

Mr. AVERY: I object to that as the witness says he doesn't know which one it was.

A. I could not say that I did.

Testimony of G. S. Wickman.

Q. State, Mr. Wickman, if you can the topography of the north side of the Peabody placer, that is that area or portion above the river?

A. That would be the narrow flat highlands up in here, (indicating).

Q. All that from up near the falls down from corner No. 1 to corner—to the north of the river and including within your description all of it to the north line of the Peabody?

A. From corner No. 1 it is rocky and there is bluffs that run right along the side of the river there until you get somewhere down in here (indicating).

Q. Near corner 2?

A. Yes sir, and then it is irregular there for a ways.

Q. Until you get over here (indicating).

A. Yes, sir.

Q. From at the point where the ditch crosses?

A. On the Peabody it commences to get more level there and off in here (indicating), somewhere there is quite a big gravel formation along in there (indicating).

Q. Near—due south or nearly due south from corner No. 1 as it appears on the Wickman placer?

A. Yes, I should think so.

Q. State the configuration of the placers with reference to any large ravines running along there?

A. There is quite a big ravine that runs throughout here somewheres (indicating). I should judge up in that direction from the river.

Q. That is running from a point (indicating) on the Peabody placer about “39928” in figures?

Testimony of G. S. Wickman.

A. Yes, right in that vicinity somewhere, right near there.

Q. And in which direction does it run?

A. Runs off in this direction.

Q. That is north?

A. North, towards the foothills there.

Q. Now, on that trip there in 1903 did you go over the Wickman placer?

A. Yes, sir.

Q. And did you pan on that placer?

Mr. AVERY: I object to that as being repetition.

A. Yes, sir.

Q. Now, Mr. Wickman, state if you recall where you panned. Just what you did on the Wickman placer at that time?

Mr. AVERY: I object to that as having been answered by the statement that he did not know and could not recall what parts of the Wickman, or either of them, he panned on, except on the river.

Mr. BLAIR: You may answer.

A. We panned along the bank, I should call it, west of corner No. 4 this (indicating) is corner No. 4. There is a bank along here. We panned some on that bank, and then we went back upon the flat away over in this part, (indicating) near corner No. 2, and we done some panning over there, that is we got dirt there and carried it down to the river.

Q. When you say "we," whom do you mean?

A. Well, Mr. Early was with me most of the time and this other miner. I don't know what his name was.

Testimony of G. S. Wickman.

Q. And did you pan that at the river?

A. Yes, sir.

Q. Washed it at the river?

A. Yes, sir.

Q. With what result?

Mr. AVERY: My objection as to competency goes to all this.

Mr. BLAIR: Yes, sir.

A. We found colors in it.

Q. State the nature and kind of colors and so on?

A. They were small specks of gold.

Q. Did you have a microscope or magnifying glass with you?

A. There was one in the crowd, yes sir.

Q. Could you see those without the aid of a microscope or magnifying glass?

A. Yes sir.

Q. At that time were there any other persons panning upon the property?

A. Yes, sir.

Q. Who were they if you know?

Dr. Hudnutt and Mr. Peabody.

Q. When you were on the Wickman placer were there other people panning other than those you have just mentioned? Strangers?

A. There were two men there on the placers panning, strangers to me.

Q. Did you see them at that time?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. Now, Mr. Wickman, did you prior to that time ever do any panning?

A. No, sir.

Q. In panning those pans did you do the manual work?

A. I done some of it, yes sir.

Q. And did you see panning done by Mr. Early?

A. Yes, sir.

Q. You stated the nature of Mr. Early's occupation?

A. He is a miner.

Q. Do you know the length of time he has been a miner?

A. Only what he has told me.

Q. How long has he been a miner to your knowledge?

Mr. AVERY: I object to that because the witness has disqualified himself to answer the question. He says he only knows from what he has been told and he can only answer from hearsay.

Mr. BLAIR: I think that he does know.

Q. Now, Mr. Wickman, did you go to the property on any other occasion?

A. Yes, I went there again.

Q. Now, first, Mr. Wickman, before leaving that,—in 1903, did you visit the property again that June?

A. Only the once.

Q. And where did you go there for?

A. What did I go there for?

Q. Yes.

A. I went.

Q. Where did you go after leaving there?

Testimony of G. S. Wickman.

A. I came back to Spokane and went east to St. Paul.

Q. Did you take any samples of the dirt at that time?

A. Yes, sir.

Q. What did you do with them?

A. I brought them to Spokane.

Q. Did you have them assayed?

A. Yes, sir.

Q. Have you that assay?

A. Yes, sir.

Q. What did they show?

Mr. AVERY: I object to that as not the best evidence, what the assay showed.

Q. Have you the assayer's return?

A. I have a certificate, yes sir,—did you want to see it?

Q. Yes,—do you know the quantity of sand that you brought down at this time?

A. I could not say what it weighed, no. I brought it in a tobacco pouch that I had in my pocket.

Q. Just a small tobacco pouch?

A. Yes, sir.

Q. (Looking at paper.) This is the assayer's report, isn't it?

Mr. AVERY: I object to that. It is immaterial what it is. It is not properly in evidence nor is it admissable.

A. Yes, sir.

Mr. BLAIR: I offer in evidence this assayer's report and request that it be marked defendant's exhibit "A."

Mr. AVERY: I object to it because it is manifestly improper. It is the worst kind of secondary evidence and

Testimony of G. S. Wickman.

not the best evidence and it is a question which I think, as to the character of it, that the examiner ought to pass on.

Mr. BLAIR: There are certain reports made in the regular course of business that are exceptions to that rule to which you refer and this may be one of them. I withdraw that offer for the present time.

Q. Mr. Wickman, after leaving Washington that time you went back to St. Paul?

A. Yes, sir.

Q. State whether or not you did after returning invest in the stock of the Multnomah Mining, Milling & Development Co.?

Mr. AVERY: I object to that as utterly immaterial and incompetent and irrelevant.

Mr. BLAIR: I want to show the good faith of this man as one of the company.

Mr. AVERY: I don't think that that is one of the evidences of good faith, or any evidence of good faith whatever.

Mr. BLAIR: It may be. I am going to submit it to the court.

A. I did, yes sir.

Q. What action did you take in that respect?

Mr. AVERY: I make the same objection as incompetent, immaterial and irrelevant and it does not have anything to do with any of the issues that are involved here.

A. I advised my people and my friends to buy the stock.

Mr. AVERY: I object to that and move to strike it

Testimony of G. S. Wickman.

out on the additional reason that it is not responsive, and calls for heresay evidence and in the conclusion of the witness and leaves an implication that is not admissable.

Q. Did you advise your friends to buy?

Mr. AVERY: I make the same objection and it is somewhat leading.

A. Yes, sir.

Q. When you stated that you advised your people, who do you mean?

Mr. AVERY: I object on the same ground.

A. My brothers and members of my immediate family.

Q. And did they invest?

Mr. AVERY: I also object to that and move to strike it out because it contains a self serving declaration by a party admitted to be directly in interest.

Q. Now, Mr. Wickman, you may state if you know what reasons induced you to advise them in this way?

Mr. AVERY: I object to that as grossly improper and incompetent and as having nothing to do with the issues in this case, what his reasons were.

Mr. BLAIR: It is a matter of good faith.

A. I advised them on account of my observations on the ground when I was up there and thought it was a good thing and that was my reason for asking them to take the stock.

Mr. AVERY: I move to strike it out on the ground stated in the objection.

Q. Now, Mr. Wickman, did you go there thereafter?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. To Nespelem?

A. Yes, sir.

Q. To these placers?

A. Yes, sir.

Q. What was the occasion of that second visit and when?

Mr. AVERY: I object to what the occasion was.

Q. I mean what time?

A. It was in 1906 I believe.

Q. Do you recall the time of the year?

A. In June.

Q. Did you go upon the placers at that time?

Mr. AVERY: I also object on the ground that this is subsequent to the patent, therefore immaterial.

A. I did.

Q. State whether or not you panned at that time on the Peabody?

Mr. AVERY: I object to that on the ground that it is immaterial and incompetent because it refers to something done after the issuing of the patent. If that be not well taken, then I object to it on the ground that it is incompetent, immaterial and irrelevant and particularly incompetent because the witness is not qualified, has not shown himself qualified to testify as to what was on the placers in the way of gold.

Q. State whether or not you panned at that time on the Peabody?

Mr. AVERY: Same objection.

A. I did.

Testimony of G. S. Wickman.

Q. Can you state the place upon the Peabody where you panned?

Mr. AVERY: Same objection.

A. Not the particular place, no.

Q. Can you state the number of places you panned?

A. No, sir.

Q. State whether or not you recall whether you found any gold at that time?

Mr. AVERY: I make the same objection.

A. We did.

Q. State the nature and quantity of the gold found?

A. It was, some pans had,—run from 2 to 8 or 10 colors a pan.

Q. If you can, state whether or not you experienced any blanks as you call them?

A. I think we did, yes sir, in some places.

Q. State the nature of the soil that you panned on this last occasion?

A. Mostly gravel.

Q. Did you pan on the south side of the Nespelem?

A. On the second occasion?

Q. On the Peabody?

A. No sir, I don't think we did.

Q. Did you pan on the Wickman?

A. Not on that occasion.

Q. Now did you make any subsequent trip to the placers?

A. Yes, sir.

Q. When was that?

A. 1908 in September.

Testimony of G. S. Wickman.

Q. State what you did on that occasion?

Mr. AVERY: I make the same objection. I object to that on the ground that it is immaterial and incompetent because it refers to something done after the issuing of the patent. If that be not well taken, then I object to it on the ground that it is incompetent, immaterial and irrelevant and particularly incompetent because the witness is not qualified, has not shown himself qualified to testify as to what was on the placers in the way of gold.

A. We panned the same as we did on the previous occasions.

Q. When you say "we" who do you mean?

A. There was Dr. Hudnutt and Mr. Brian and Mr. Early and myself.

Q. Mr. Hudnutt, that is the doctor here?

A. Yes, sir.

Q. Did you do any panning personally?

A. I did, yes sir.

Q. State whether you can take sand in a common miner's pan, dip it in the water, agitate it in the manner adopted by miners and eliminate the dirt and sand therefrom, and save the gold?

Mr. AVERY: I make the same objection and also it is leading.

A. I have done it, yes sir.

Q. Did you in September 1908 find any gold in your panning?

A. I did.

Q. Did you see any gold panned by the other members of the party?

Testimony of G. S. Wickman.

A. Yes, sir.

Q. State if you recall the number of colors found in those pannings?

Mr. AVERY: What pannings?

Q. In 1908, in September?

Mr. AVERY: Do you mean in his panning or other pannings?

Q. Those that he panned and those that he saw?

A. There was one pan that I panned myself that there were 10 colors that could be seen with the naked eye,—one of them was quite a good size flake.

Q. After this time did you pan on the Wickman placer?

A. No, sir.

Q. Now, Mr. Wickman, with reference to those pannings, state if you can the nature and appearance of the gold found in those various pannings?

A. Well, it was—on this occasion it was little flakes. One piece that there was, was two round pieces connected with a little neck across. That was the largest flake that I got in that pan. It appeared to be like little thin flakes of gold.

Q. Were they observable with the naked eye?

A. Yes, sir.

Q. Now where with relation to the river did you—

A. Yes, sir.

Q. Pan in 1908, in September 1908 on the Peabody?

A. It was right near where the cabin is located on the north side of the Nespelem river. That is, not very far from the cabin.

Testimony of G. S. Wickman.

Q. Did you at that time pan on the south side of the Nespelem?

A. Yes, sir.

Q. What point on the south side did you pan?

A. It was up about, a little bit north from the cabin, northwest, I guess it is. A little bit up the river and across the river from where the cabin stands.

Q. With what result?

A. Found colors there.

Q. Did you make any visit subsequent to the one in 1908?

A. Yes, sir.

Q. When was that?

A. That was in July 1909.

Q. The present month?

A. Yes, sir.

Q. And at that time did you go upon the placers?

A. Yes, sir.

Q. Were you alone?

A. No, sir.

Q. Who was with you?

A. Dr. Hudnutt and Mr. White.

Q. Mr. White is the gentleman sitting there (indicating)?

A. Yes, sir.

Q. On that occasion did you pan on the Peabody placer?

A. Yes, sir.

Q. On what side of the river?

A. On the north side of the Nespelem.

Testimony of G. S. Wickman.

Q. On the Nespelem?

A. Yes, sir.

Q. Did you pan any on the south side?

A. No sir, I did not.

Q. Was any panning done on the south side?

A. Not in my presence.

Q. Now, did you, in the panning, find any gold?

A. Yes, sir.

Q. To what degree?

A. What I found myself or what the others found?

Q. What you found yourself and what the others found?

A. I dug in the bank there and took some gravel and took it to the river and panned it. There were several colors in it. Mr. White took a pan at the same time and we both went to the river and Mr. White called to me after he had got there with mine and we went over and he had a nugget in his pan.

Q. You saw the nugget in his pan, did you?

A. I did, yes sir.

Q. Did you at that time, at the time of the last visit, pan on the Wickman placer?

A. Yes, sir.

Q. At what place—describe it with reference to the map?

A. It was northwest of corner No. 4.

Q. Northwest of corner No. 4?

A. Yes, sir.

Q. What did you find, if anything?

A. Mr. White and I each took a pan of dirt there and

Testimony of G. S. Wickman.

we also shoveled some in the sack and took it down to the river and I panned one pan and found one color in it that I took down there.

Q. What was the nature of the soil from which you took this pan to which you refer?

A. Well, it was—there was some stone in it and gravel and some dirt and loam.

Q. When you say dirt you mean loam?

A. Loam, yes sir.

Q. Did you pan the sack full that you refer to?

A. I did not, no sir.

Q. Did you see it panned?

A. Yes, sir.

Q. By whom?

A. Dr. Hudnutt and Mr. White.

Q. With what result?

A. Found colors in it.

Q. Do you know in what numbers?

A. I do not.

Q. Did you see them?

A. Yes, sir.

Q. Were they visible to the naked eye?

A. Yes, sir.

Q. Are you familiar, Mr. Wickman, with the country near these placers?

A. Yes, sir.

Q. Are you acquainted with the general character of the country through which the Nespelem flows?

A. I have been over it a good many times, yes sir.

Testimony of G. S. Wickman.

Q. State if you know the character of the country through which it flows?

Mr. AVERY: I object to this as immaterial.

Mr. BLAIR: I may state that I offer this in order to show the mineralized character of the country.

Mr. AVERY: Add to the other objection that this witness is not qualified to state on the subject.

Mr. BLAIR: I don't want to show as an expert, but his knowledge.

Q. What is the character of the country?

A. There is various prospects up there and quartz claims.

Mr. AVERY: I move to strike that out as not responsive. That don't prove the character of the country.

Q. State whether or not the Nespelem flows near these claims, these quartz claims?

Mr. AVERY: I make the same objection as immaterial.

A. The Nespelem drains that whole country above there.

Q. State whether or not the country is mineralized?

Mr. AVERY: I object as the witness has not shown himself qualified to answer.

A. We took a great many samples from there and had them assayed and found mineral.

Mr. AVERY: I move to strike the answer out as hearsay and also being incompetent and immaterial.

Q. State whether or not the Multnomah Mining, Milling & Development Company owns any claims in the area just mentioned?

Testimony of G. S. Wickman.

Mr. AVERY: I object to that as immaterial.

A. It does.

Q. Is it in the area tributary to the Nespelem?

Mr. AVERY: I make the same objection.

A. Some of it, yes sir.

Q. What is the character of those claims in point of mineral character?

Mr. AVERY: I object to that as immaterial.

A. They carry gold, silver, copper and some lead.

Q. State whether or not there are other claims of the same nature in that vicinity?

Mr. AVERY: I object to that as immaterial and incompetent.

A. There are.

Q. What means of communication is there to the Nespelem placers from the outside world?

Mr. AVERY: I object to that as immaterial, that is, unless counsel state that he wants to put it in for, I may withdraw the objection, it is not material so far.

Mr. BLAIR: Well there is a good deal of testimony here that this is a fruit ranch I understand, and I want to show that its inavailability makes it almost the end of the earth. I think that is competent for that purpose. I can show that part by another witness.

Q. Any railroad connects these placers?

Mr. AVERY: Same objection.

A. No, sir.

Q. Any steamboat connection to them?

Mr. AVERY: I make the same objection.

A. Not to my knowledge.

Testimony of G. S. Wickman.

Q. You have heard about steamboat connection about once in four years I understand?

Mr. AVERY: I object to that as leading and immaterial.

A. I have heard that there has been a boat up there.

Q. What is the nearest railroad point?

A. As far as I know Almira.

Q. What is the distance by wagon road?

A. It must be 30 miles around, in the neighborhood of 30 miles.

Q. State the character of the country through which the road runs?

A. The first part of it from Almira is out through a kind of rolling prairie country and strikes into,—I don't know just how to describe it, but hills, basalt hills and then through a coulee and so on to the river over a rough, hilly road.

Q. Do you know after leaving the Columbia river on its south bank what height the wagon road goes to get to the elevation of the grand coulee?

Mr. AVERY: I object to that as immaterial.

A. I do not.

At this time, 4:50 P. M. July 13, 1909, the hearing was adjourned until 11 o'clock July 14, 1909, at which time it was further adjourned until 1 o'clock P. M. July 14, 1909.

Spokane, Wash., July 14, 1909. 1 o'clock P. M.

Hearing resumed pursuant to adjournment, all parties being present.

G. W. WICKMAN recalled for further examination.

Testimony of G. S. Wickman.

DIRECT EXAMINATION (Cont.).

By Mr. BLAIR:

Q. Judging from the facts that you have testified you saw upon the Peabody and Wickman placers before the patent was obtained in this case, in the case of these two placers, state whether or not you had an opinion and belief at that time as to the placer value of those two placers?

A. I had, yes sir.

Q. State what that opinion or belief was?

Mr. AVERY: I object to that as incompetent, immaterial and irrelevant, and in addition to that objection the other objection that the witness has not shown himself qualified or competent to answer the question or have such knowledge of the ground as would be the foundation for a lawful belief in proceeding for a patent or for testifying here.

A. After looking over the property thoroughly and prospecting it and the gold we found there it was my opinion that the ground was—that the territory covered by the two patents, that gold was there on it, that there was gold there dissiminated through the whole territory there—from the indications that we found on the surface and the gold that we found on the surface led me to believe that if we got down to bedrock or down into the gravel that we would find gold all through there in paying quantities.

Mr. AVERY: I move to strike that out as not responsive.

Q. State your opinion or belief at that time as to the

Testimony of G. S. Wickman.

value of these two placers as gold placer propositions?

Mr. AVERY: I make the same objection.

A. I don't think I just understand the question.

Q. State whether or not in your opinion it was a gold, —presented the prospect of a good paying placer proposition.

A. It did, yes sir.

Q. Was that your belief at that time?

A. Yes, sir.

Q. Is that your belief at the present time?

Mr. AVERY: I make the same objection and in addition I object to it as leading.

A. Yes, sir.

Q. State whether or not, Mr. Wickman, there were any other considerations other than those testified to by you leading to this belief?

A. Well, from the fact that the lay of the ground and the water that could be put on it and the character of the country above it were all indications in my opinion that it was valuable property as a placer mine.

Q. State whether or not you knew when the application for patents for these two placers were pending, were being made and pending?

A. I knew when they were, yes sir.

Q. State whether or not at that time you had any conversation with the other officers of the Multnomah Mining, Milling & Development Company regarding the feasibility of these two placers as gold placer propositions?

Mr. AVERY: I object to that as immaterial, incompetent and calling for heresay testimony,—self serving

Testimony of G. S. Wickman.

declarations, and not the best evidence if it was otherwise competent, which it is not.

A. I had conversations with them at different times regarding it, yes sir.

Q. What was said at these conversations relative to the feasibility and the value of these placers as placer propositions?

Mr. AVERY: I make the same objection.

A. That was our opinion. We had these conversations in relation to it, yes sir.

Q. And what was the substance of these conversations with reference to the feasibility and value of these two placer claims as placer propositions?

Mr. AVERY: I object to that for the same reasons last stated and the further reason that it calls for heresay evidence, self serving declarations and cannot bind the complainants in this case,—utterly incompetent proof.

A. It was our opinion it was.

Q. Was it the opinion expressed in those conversations of all the other officers of the company?

Mr. AVERY: I put in the objection, the same on that I last made, and in addition to that it calls for the witness' conclusion and is leading.

A. Yes, sir.

Q. Did they so express themselves in those conversations?

Mr. AVERY: I make the same objection as last made. Yes, sir.

Q. Mr. Wickman, what is your belief with reference to

Testimony of G. S. Wickman.

the placer value of those propositions at the present time?

Mr. AVERY: I make the same objection.

A. I believe they are valuable as a placer proposition.

Q. Now, Mr. Wickman, state whether or not you are familiar with the pecuniary condition of the Multnomah Mining, Milling & Development Company since its organization?

A. I am sir.

Q. State when you became a member of the Multnomah Company by becoming a stock holder?

A. I got some stock somewhere around 1900.

Q. Were you a stock holder of the company at the time of the application for these patents?

A. Yes, sir.

Q. Were you an officer of the company?

A. I could not swear positively that I was, I think I was made an officer after the application had been made.

Q. Were you an officer before the patents were obtained?

A. Yes, sir.

Q. Are you an officer now?

A. Yes, sir.

Q. What?

A. Treasurer.

Q. Treasurer?

A. Treasurer, yes sir.

Q. State what has been the pecuniary condition of the Multnomah Company since 1900?

Mr. AVERY: I object to that as immaterial.

Testimony of G. S. Wickman.

A. We have been at various times pretty close down and not very much money at any time. We have been in condition where it took—sometimes I had to use my own personal money to pay up the bills and also some of the other officers had done the same thing.

Q. State whether or not you know salaries have gone unpaid on account of financial conditions?

Mr. AVERY: I object to that as immaterial.

A. They have, yes sir.

Q. State whether or not the company has been engaged during this time in the working of other properties?

A. They have, yes sir.

Q. Where are these other properties situated?

Mr. AVERY: I object to that as immaterial.

A. In the hills above the placer ground.

Q. In the Nespelem region?

A. Yes, sir.

Q. State whether or not the company has been peculiarly situated since the patents were obtained in this case, to exploit them and work them beyond the extent to which they have been worked?

Mr. AVERY: I object to that on the ground that it calls for a conclusion of the witness, is immaterial, incompetent, and has nothing to do with the issues in this case.

A. We have been working as far as our financial circumstances would allow us to.

CROSS EXAMINATION.

By Mr. AVERY:

Testimony of G. S. Wickman.

Q. Where were you born, Mr. Wickman?

A. In Michigan.

Q. How long did you reside in Michigan?

A. Practically for 24 years—22 years.

Q. 22 years?

A. Yes, sir.

Q. How old are you now?

A. Forty-five.

Q. When did you go to Winnipeg?

A. In December 1907.

Q. What was your business while you were living in Michigan?

A. I was a farmer until I was twenty-one years old.

Q. What business did you next follow?

A. I was in the mercantile business.

Q. Whereabouts?

A. Horton, Michigan.

Q. How long?

A. Well probably 4 years, about that time.

Q. You were then twenty-five years old?

A. About 24 or 25 when I left there.

Q. General merchandising?

A. Yes, sir.

Q. What business did you next go into?

A. I worked for the state of Michigan for a short time in the penitentiary.

Q. How long were you there?

A. 6 or 8 months.

Q. Then what did you do next?

A. I moved to Chicago.

Testimony of G. S. Wickman.

Q. Went into that business there?

A. Into the packing business.

Q. And you have been in the packing business ever since?

A. Yes, sir.

Q. How long did you live in Chicago?

A. Ten years.

Q. And then went to Wninipeg?

A. No sir—let me see—I think I was in Chicago 8 years—between 7 and 8 years, and I went from there to St. Paul.

Q. This Multnomah Company I understand you to say owned several claims up around in the neighborhood of the Wickman and Peabody?

A. Yes, sir.

Q. In that neighborhood, did you say, in that vicinity?

A. Yes, sir.

Q. In that vicinity—how far are they away?

A. Well I should judge they are, the farthest one is perhaps five and one-half miles, and some of these are within three miles, and I think one is right at the top.

Q. That one is on the placer ground, do you know?

A. No, I would not answer to it.

Q. These are all quarts claims?

A. Yes, sir.

Q. What are the names of these different claims—how many are there in all?

A. I could not say just how many.

Q. Well, can you give some idea?

Testimony of G. S. Wickman.

A. I can give some idea, yes, but I cannot say just the names.

Q. Name some—as many as you can?

A. Pansey, Hidden Treasure, The Multnomah group, several calims in there, I don't know the names of them.

Q. You don't know the names of them, how many in that claim?

A. I think there are eight.

Q. You don't know their names?

A. I do not.

Q. What other ones?

A. And I think "The Great Divide is the name of one and "Black Prince." I could not say the names of the others of that group. There is three other claims in that group with the Great Divide and the Black Prince.

Q. You say that in the Great Divide there are three claims?

A. Five altogether.

Q. And in the Black Prince?

A. We include the Black Prince and the Great Divide in the five.

Q. Can you tell the names of any others?

A. No, sir

Q. These are all owned by the Multnomah Mining, Milling & Development Co.?

A. Yes, sir.

Q. The offices of the company are here in the city, aren't they, the head offices?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. Have you ever printed any literature in connection with the Multnomah properties?

A. There has been literature printed.

Q. What is the nature of it?

A. Gotten out reports each year, annual reports.

Q. Have you those reports with you?

A. No, sir.

Q. I suppose you can get them?

A. I could not say. I have got some in Winnipeg if I have not got any here.

Q. Wouldn't they be in the office up here?

A. They might be.

Q. You don't know whether they are or not?

A. No, sir.

Q. How many annual reports have you?

A. I could not say. I think we have gotten out one each year since 1902.

Q. One each year since 1902—did you ever get out any prospectii?

A. Yes, sir.

Q. How many of these have you gotten out?

A. I think we only got out one real prospectus, that was when we started in.

Q. Have you that with you?

A. No, sir.

Q. Have you it in the city?

A. No, sir.

Q. How do you know that there is not one in the office?

A. I don't know.

Q. So you don't know that there is not one in the city?

Testimony of G. S. Wickman.

A. I don't know.

Q. Then you don't know whether there is one in the city or not?

A. I do not.

Q. You don't know, Mr. Wickman, whether there are any in the city?

A. No, sir.

Q. Have you made any inquiry since you have come to town or at any other time from any of the other witnesses here or officers of the company whether there was any prospectii of that company in the city?

Mr. BLAIR: I object to that as immaterial and not affecting the issues in any way.

A. No, sir.

Q. Now, while this is fresh on my mind, I will ask you, Mr. Wickman, if you will get, if you can, these annual reports and the prospectii of the company after you leave the stand, will you try to do that?

A. I will try to do it, yes sir.

Q. Where are there any of these prospectus or prospectii?

A. I have one in Winnipeg, one of my own. I don't know anything about any other.

Q. What are they used for?

A. They are sent to the stock holders.

Q. Were they sent to people to whom you hoped to sell stock?

A. I could not say.

Q. What was your duty as treasurer?

Testimony of G. S. Wickman.

A. To take care of the cash and pay it out as ordered by the officers of the company.

Q. Aren't you trying to sell any stock now?

A. I am not, no.

Q. Is the company trying to sell stock now?

A. No sir, not right at present.

Q. How long since it has been?

A. A couple months ago probably.

Q. Well, at that time there must—as an officer of the company you know that there were some of these prospectii in the office, don't you think?

A. I could not say, I presume there is.

Q. Now what was that, in the nature of a circular?

A. The prospectus?

Q. Yes, sir.

A. It was in a pamphlet form.

Q. You say it was gotten out, did you say in 1902?

A. I didn't say. I said somewhere around 1900, I think in 1900 or 1902. I could not tell the date of it.

Q. It was gotten out last year too, wasn't it?

A. There was a report that has been gotten out last year and every year.

Q. But the prospectus has not been?

A. No, sir.

Q. What was the name of that prospectus, was it called the prospectus of the Multnomah Mining, Milling & Development Company?

Mr. BLAIR: I object to the question. The prospectus is the best evidence of statements as to what will be the name of it, and so forth.

Testimony of G. S. Wickman.

A. I think so. I could not say whether it was or not.

Q. Well it was—it didn't purport to be anything but the prospectus of the corporation, did it?

A. Nothing but that nature.

Q. It was gotten out immediately after the organization of the company, wasn't it?

A. I could not say how long after.

Q. It was afterwards?

A. Yes, it was.

Mr. BLAIR: I object to this line of cross examination unless it has some relation to the financial condition of the company. It was not entered on the examination in chief, and I move to strike it out for that reason.

Q. You were one of the locators of the Peabody and Wickman also, weren't you?

A. I believe so, yes sir.

Q. You are one of the incorporators also of the company?

A. Yes, sir.

Q. Had you ever had any experience in gold mining before you came here in 1903?

A. I had been on mining ground, yes, but not to any extent.

Q. You say that you first camped on this ground in June 1903, that is right isn't it?

A. I think that was the time, yes sir.

Q. And at that time you made an examination in connection with Mr. Early and Mr. Peabody and Dr. Hudnutt, that is true isn't it?

A. And another gentleman, another miner.

Testimony of G. S. Wickman.

Q. Whose name you don't know?

A. Yes, sir.

Q. Now this examination was confined to about ten hours I believe you said?

A. I believe about that time, yes sir.

Q. Did you all pan together?

A. Not at all times, no sir.

Q. How many pans did you have?

A. I could not say.

Q. Well, did you have more than one?

A. Yes sir, we had a good many.

Q. Had a good many?

A. Yes, sir.

Q. Well, do you know where you panned on that day?

A. I know some of the places, yes sir.

Q. Name such of them as you can?

A. Well, I panned along the Nespelem river on the Peabody placer.

Q. In the bottom of the river?

A. No sir, in the bank.

Q. How far up the river?

A. At some places it was 50 yards away in some places 100 yards, I should judge. I could not say just how far.

Q. And how many colors did you find during that day?

A. I couldn't say.

Q. Are you able to say?

A. No, sir, I could not say just how many.

Q. You could not—you didn't find them in every pan did you?

Testimony of G. S. Wickman.

A. Nearly every pan,—every pan that I took out of the gravel.

Q. Where did you find the gravel?

A. All along the bank, I believe.

Q. That is from 50 to 100 yards from the river?

A. Yes, we found it there in other places.

Q. When you said flakes I suppose you mean by that—what did you mean by that, I will ask you?

A. I mean there was little flakes of gold in the pan.

Q. Little flakes of gold?

A. Yes, sir.

Q. Or little specks of gold?

A. Well, there was some flakes and some that was specks. I don't know the difference even between flakes and specks.

Q. In your testimony you are assuming that flakes and specks are—?

A. The same thing.

Q. I think you said just now, you didn't know the difference?

A. Some of them are flakes and some of them are specks.

Q. What is a flake and what is a speck?

A. I don't know that I could define it, but what I call a flake is a thin piece of gold that was in the pan.

Q. How big?

A. Some of them were as large as—there was one piece in one particular pan that had two round ends connected with a little bar and one of them is as large as a good sized pin head.

Testimony of G. S. Wickman.

Q. Those were the largest you ever found?

A. They were the largest I found at that time, the largest I ever found personally, yes sir.

Q. And found those yourself on some of your prospecting?

A. I found some of them and some of the others found them. On this particular panning I partly panned it down and Mr. Early finished it.

Q. Will you tell where you got that particular pan from?

A. It was somewhere right in here (indicating).

Q. Somewhere near there?

A. Near "39928."

Q. How far from the shore?

A. O, I could not say, not very far.

Q. Can you tell it any more definitely than it was not very far?

A. It was not very far, no sir.

Q. When did you first see those two specks or flakes showing together?

A. I saw them when we were panning them and washing on it.

Q. When you first commenced or when you had concluded your work?

A. When we had concluded it.

Q. When did you find a string of colors, one about an inch and a half long?

A. One color an inch and a half long?

Q. String of colors?

A. That was in—along the Nespelem river.

Testimony of G. S. Wickman.

Q. In the same place?

A. In the vicinity. I don't know just where.

Q. Who panned that?

A. I panned part of it and Mr. Early finished it.

Q. You panned part and Mr. Early finished it?

A. Yes, sir.

Q. You all had something to do with each of the pans that were taken out, did you?

A. No, sir.

Q. Why didn't you finish it?

A. Because Mr. Early made the remark, he says you got a dam good pan there and says you will spill it out and took the pan away from me and finished it.

Q. And that really was phenominal, that pan?

A. It was not extra, no sir.

Q. Did you work at anything on the Wickman that day?

A. Yes, sir.

Q. Where did you pan on the Wickman?

A. (Indicating on map.) This would be west, wouldn't it?

Q. Yes.

A. We panned at the northwest of corner No. 4 and also over in the vicinity of corner No. 2 in a hole that was over there somewhere.

Q. Discovery hole?

A. I don't know what it was.

Q. You panned in two places at that time?

A. We panned in more places than that.

Q. Where were the other pannings?

Testimony of G. S. Wickman.

A. Various places along this bank up about here.

Q. Where, on the surface?

A. No, sir.

Q. How deep down did you go?

A. The bank is cut off and we dug into the bank.

Q. Where does this bank run that you speak of—right between corners 2 and 4?

A. No, it runs along here (indicating), I should judge somewhere just about in there (indicating).

Q. Was there a bank here (indicating), is that higher than this (indicating)?

A. It goes off down to the Columbia river, then a flat between this flat, between that and the bank.

Q. You were on the Wickman claim, weren't you?

A. Yes, sir.

Q. And you say that there is a bank running along north and approximately parallel or substantially parallel with the southwest line of the Wickman?

A. There is a bank in there (indicating) right along here. Right in here is where it looks according to my way of looking at the plat.

Q. You say that there is a bank running from or near corner 4, northwest?

A. It is not very far from corner 4, no.

Q. How far does it extend northwest?

A. Well, not very far, it cuts off down in this direction (indicating) where there is some sand dunes—goes off near those sand dunes there somewhere.

Q. I believe you said you got one color, one or two colors at that time on the Wickman, didn't you?

Testimony of G. S. Wickman.

A. I don't think I said so.

Q. What is the fact?

A. I said we found colors there.

Q. You have no idea how much or where you found them?

A. We found them along that bank.

Q. Is that the only place?

A. And we found some over in a hole. There was the dirt that we carried from the hole down to the river.

Q. How much dirt did you carry from the hole to the river?

A. I could not say how much there was. I could not say what the quantity was.

Q. You didn't carry it all down—that is, you didn't carry all the dirt that was taken out of the hole?

A. No, sir.

Q. Did you take from the bottom or the sides of the hole, or from what part?

A. All that was taken out of the hole was taken from the bottom of the hole as I recall it, we panned that dirt.

Q. You say in regard to the Peabody that there were generally colors in the pan?

A. Yes, sir.

Q. Not always, was there?

A. Always when we took the dirt from the gravel. I don't think I ever saw a blank in any pan where we took the gravel.

Q. How did you discover these colors, they are discernable only when they are wet, are they?

A. Some of them, yes sir.

Testimony of G. S. Wickman.

Q. Are you able to pick them out of the dry soil?

A. Some of them, yes sir.

Q. How did you do it, with a microscope?

A. Pick them out before we panned it—when it has been panned, after it has been panned you can see them when they are dry.

Q. What color are they?

A. Same color.

Q. What color was it?

A. Gold color.

A. That is yellow color?

A. Yes, sir.

Q. All one and the same color?

A. No, sir.

Q. What is that—it don't resemble at any time any of the dirt, or the sand or the gravel, with which it is mixed?

A. I could not say—not that I know of.

Q. Away from the river you didn't get as much gold?

A. Not as much as we did along the Nespelem river.

Q. Now you stated, I believe, that from your observation, that from that you made up your mind that it was good placer ground. Now will you state from what facts as you discovered them did you decide that this was good placer ground?

A. Well, from the fact that we found gold there in various places and from the location of the ground and it being tributary to rock that was gold bearing.

Q. Where was this rock that was gold bearing?

A. It was up in the hills from the placers.

Q. How far from the placers?

Testimony of G. S. Wickman.

A. At various distances.

Q. Well how far, or the average distance or the nearest distance?

A. The nearest that I, where I got any rock myself and had it assayed and found gold in it, I should judge was about two miles.

Q. Your idea was that all of this placer ground down there that is, these colors, came from up there?

A. The upper placer, yes; the high ground, the upper placer.

Q. What do you mean by upper placer?

A. Well, up on the flat.

Q. Where did the other come from?

A. I could not say, it came from the river I suppose.

Q. What river?

A. Nespelem river?

Q. Then you don't think that the gold in the Peabody had its origin where the gold in the Wickman did?

A. Some of it, yes sir.

Q. What part of it?

A. Well that, that is all above the flat there the gravel that came down that way and the wash that came down the other way from the Nespelem country.

Q. Where is that wash that you refer to?

A. Well it is around in here (indicating), over I should judge, over this point here all the way along there (indicating) in here, and the wash—there is a gully comes down below this around and runs down there.

Q. Then I understand you to say that about half way between corner 7 of the Peabody and corner 1 of the

Testimony of G. S. Wickman.

Wickman, that the country running northwesterly towards the west end of the Wickman, you think the colors on that came from up north?

A. I think that some of them did, yes sir, that was my opinion.

Q. That was your opinion, based on what, Mr. Wickman?

A. On the fact that there was gold up in the hills and gold down there.

Q. And your idea was that the wash here carried this gold down across the northerly line of the Wickman?

A. Yes, that was my idea.

Q. And that the gold or colors that you found along the Nespelem river was brought down the river?

A. They might have come in that way and might have been washed from the Columbia river, I don't know.

Q. You don't know, you think that the Columbia river is liable to carry gold?

A. It does carry. I have heard that it did, yes sir.

Q. Did that fact enter into your calculations in estimating that?

A. I could not say that it did.

Q. What is this—take this unoccupied land southwest of this line between corners 3 and 4 of the Wickman—that is gravel and sand, isn't it along there?

A. Well it is low down there until you get down to these sand dunes, a low flat down in there.

Q. Now, Mr. Wickman, I believe you said that after you made that visit up there in June 1903 you invested

Testimony of G. S. Wickman.

your money and went back and advised your friends to, in the company?

A. I said that I did invest money, yes sir, and advised my friends to.

Q. In the company?

A. Yes, sir.

Q. In its stock?

A. Yes, sir.

Q. You were already a stock holder, weren't you?

A. I was

Q. How much stock did you own?

A. I could not say just at that time.

Q. Can you say now how much you owned then?

A. No, sir.

Q. Why can't you tell about how much you owned?

A. Oh I suppose I could tell how much I owned. I owned several thousand shares, but I don't know the exact number.

Q. The incorporators were the locators of the mine, weren't they?

A. Yes, some of them.

Q. And you stood in together and divided up the stock of the company?

A. We did after a time. We furnished our own money at first and carried it on before we incorporated, a certain length of time and then we incorporated.

Q. Well then, did you invest some more money after this trip in June 1903?

A. I bought stock since then, yes sir.

Q. Well, at that time, immediately after?

Testimony of G. S. Wickman.

A. Immediately after when I returned.

Q. How much did you buy?

A. I could not say the amount that I bought.

Q. How much money did it cost?

A. I could not say that.

Q. How much did you get your friends to invest?

A. I could not say that.

Q. Did you get a commission on the stock you sold?

A. Not at that time, no sir.

Q. Did you afterwards?

A. I have had commissions on stock that I sold.

Q. On the stock that you sold at that time?

A. No, stock that I sold after that.

Q. Did you sell the stock yourself, personally?

A. Some of it, yes sir.

Q. At that time you advised the people to whom you sold that it was a good buy?

A. I did, yes sir.

Q. And in mentioning—in telling them the advantages of it, did you tell them there was water power?

A. I told them there was water there, yes sir.

Q. Did you tell them that there was good water power on the land?

A. I presume I did, yes sir.

Q. It was a fact, wasn't it?

A. Yes, sir.

Q. And is it a fact that the Nespelem river there is a magnificent water power, isn't it?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. Did you tell them the different uses to which this water power could be utilized for?

A. I cannot say that I did, only for my own purposes for working the placers, that was my idea of it.

Q. You didn't confine yourself entirely, to that, did you?

A. I don't know that I did.

Q. Did you say anything about the ability to put water on that land and irrigate it?

A. No, sir.

Q. No part of it?

A. No, sir.

Q. How much stock has ever been sold by the company?

A. I could not say the exact amount.

Q. Well, can you say about the exact amount?

A. I suppose in the neighborhood of 400,000 or 500,000 shares, perhaps more and perhaps less; I don't know how many.

Q. How much money was realized on it?

A. I could not say.

Q. Can you tell anything about how much?

A. No.

Q. What?

A. No, sir.

Q. Do you know how much the stock sold for per share?

A. Yes, sir.

Q. All sell at the same price?

A. No, sir.

Testimony of G. S. Wickman.

Q. How much money has the corporation now?

A. I have in the neighborhood of \$3,000.00.

Q. \$3,000.00?

A. Yes, sir.

Q. How much has it taken in altogether in money?

A. I could not say.

Q. You are the treasurer?

A. Yes, sir.

Q. How long have you been treasurer?

A. I think since August 1903.

Q. Independent of your improvement work there has been no work done on the claims, has there?

A. Independent of the improvement work?

Q. The original improvement work?

A. I believe there has been some work done there.

Q. Some work done since the patent?

A. Yes sir, there has been work done there since the patent.

Q. What work has been done since the patent?

A. We have worked on the flume bed and I think the dam was put in since the patent.

Q. That dam could be utilized to make water power, couldn't it?

A. It, could, yes sir.

Q. Drive machinery and generate electricity?

A. Yes, sir.

Q. Irrigate the land?

A. It could be used for that purpose.

Q. By the way—speaking about irrigation—you have used the word gullies several times. Will you tell me

Testimony of G. S. Wickman.

in a general way the character of the Wickman in the way of the gullies that are there, how many gullies are there? I think you said there was one about here (indicating) somewheres?

A. Where is the cabin on here, if I know where that is I can tell better where I am at.

Q. Do you know where the cabin is located on the claim?

A. I could say the location there, but I don't know just where it is on the map, but I should judge right in here (indicating).

Q. That is a little above corner 7 of the Peabody and north of the river?

A. On the north side of the river along that bank. I don't know just where.

Q. Is there a gully or ravine there?

A. There is one on the other side of it some little distance.

Q. Is there any more west?

A. There is in various places gullies there.

Q. Several gullies running and commencing out west on the Wickman and running across the claim, or at least hollows, is that right?

A. I shall call them gullies. It is washed out from the water that comes down from the mountains here.

Q. Where do they extend?

A. One of them extends clear on over on the Nespelem.

Q. I mean this way, going south?

A. Where do they go to?

Testimony of G. S. Wickman.

Q. Yes.

A. There is one empties—comes out down here somewhere (indicating), I think comes out down here.

Q. That is one comes out down near figures “39928”?

A. One in here (indicating).

Q. Just over the word “Wickman”?

A. About somewhere in that vicinity.

Q. About in the middle of corners 3 and 4 on the Wickman?

A. I should judge so, yes sir.

Q. That empties into the Columbia river?

A. Yes, sir.

Q. Down on this beach here (indicating)?

A. Yes, sir.

Q. That is a gully, you say, or rolling?

A. That is a gully.

Q. How deep is it?

A. I judge in places it is 40 feet deep.

Q. Did you prospect along here in the strip southwest of the line between corners 3 and 4 of the Wickman?

A. Down in here (indicating)?

Q. Yes, sir.

A. No, sir.

Q. Why didn't you?

A. Because I didn't have time.

Q. You didn't have time?

A. No, sir. I was up on the higher ground.

Testimony of G. S. Wickman.

Q. That is the only reason you didn't prospect down there?

A. I presume it is, presume that's the only reason.

Q. It was not on your ground?

A. No.

Q. Did you prospect here?

A. I don't think that I did, with the exception of one when we was down to the river washing some gold I took a pan and shoveled it full of dirt there and washed it out.

Q. That would be, from your theory of the origin of the gold on the Wickman, that would be just as good ground as that on the Wickman, wouldn't it?

A. Might be.

Q. From your theory, wouldn't it be?

A. I could not say.

Q. Well.

A. Gravel all in here and down there there was not any gravel that I saw on that flat.

Q. That beach would get any gold washed down the Columbia river, wouldn't it?

A. I am not able to say whether it would or not.

Q. Well, you say that you think the gold that was on the Wickman came down from the rock above it?

A. That was my impression of it.

Q. Do you think it all stopped on the Wickman, mightn't it have gone over on the Columbia beach?

A. Yes, sir.

Q. Isn't it just as liable to have gone on the beach as on the Wickman?

Testimony of G. S. Wickman.

A. It might.

Q. But you didn't include that in your claim, that is right?

A. It was not included.

Q. I believe you stated that these claims, in your opinion, you stated that it was a paying gold proposition?

A. That was my opinion, yes sir.

Q. How did you think you could make it pay?

A. By working it.

Q. How.

A. The same as any placer proposition is worked, with the water.

Q. How is any placer proposition worked?

A. Worked with water, the dirt is washed out.

Q. With a pan?

A. No, sir, not with a pan.

Q. And do you expect to work it with a pan?

A. No, sir.

Q. Now?

A. Not to make any money out of it.

Q. You could not work it and make any money out of it panning?

A. No, sir.

Q. How would you do it?

A. With hydraulicking.

Q. Well, how would you apply the hydraulic?

A. I am not in position to state. I am not an expert on it.

Q. I understand you to say that in your opinion

Testimony of G. S. Wickman.

from the ground and water and everything there that was a paying proposition. I want to know what you based your opinion on?

A. I based my opinion on that we found gold in the ground and the location of the ground and the location of the water above it and that the water could be broufht down on the ground and wash the dirt out of it.

Q. How would you do it?

A. I would not say how I would do it.

Q. How do you know it would be a paying proposition?

A. I don't know as it would.

Q. You must have had some way of estimating the cost of doing this, didn't you, Mr. Wickman?

A. I didn't estimate the cost, no sir.

Q. Didn't estimate the cost at all?

A. No sir, that was left to the people that were further up in the business than I was.

Q. Then you based your judgment on what somebody else said?

A. Not there, no. My judgment was based on my opinion of the ground being valuable.

Q. The ground being valuable don't necessarily mean that you can make any money out of it, does it?

A. Well no, not altogether.

Q. I understand you could not pan that dirt and make any money.?

A. My opinion, when we panned it and found gold there in various places was that there was plenty of gold there and it could be gotten out profitably.

Testimony of G. S. Wickman.

Q. How did you figure you could get it out profitably if you didn't know how much it would cost to put the water on and do it?

A. On what other people said, that it could be worked at a profit.

Q. Then your opinion was based on what other people said and not on what you know?

A. Partly.

Mr. AVERY: I move to strike out the witness' opinion and his statement made on direct examination as to this being a paying property and as to its containing gold that could be worked profitably, and as being a valuable deposit, or that in substance.

Mr. BLAIR: I resist the motion.

Mr. AVERY: I direct it to any opinion or statement that he has made as to the value of the property or either of them as placer mines by hydraulicking.

Q. Did you ever do any mining, Mr. Wickman?

A. No, sir.

Q. You said in direct examination that you panned the Wickman west of corner 4 on the Wickman, wasn't it,—and found colors, small specks of gold. What was the character of those specks of gold?

A. They were minute particles. There were some particles of gold just about as small as they could be and be discernible; could see them plainly with the naked eye.

Q. Now you said that the company had been pretty hard up financially at different times. I will ask you

Testimony of G. S. Wickman.

again if you can tell me how much has been received by the company from its sale of stock?

A. No, sir.

Mr. BLAIR: I object to this as having been asked before as suggested in the question and I move to strike on that ground.

Q. I will ask you how much the company paid for the two prospectii?

Mr. BLAIR: That is a matter, Mr. Avery, of conclusion. It is in the record.

A. I could not say what they paid for them, the exact amount.

Q. Did they pay in stock—did the company pay in stock?

Mr. BLAIR: I object to the question as irrelevant and immaterial.

A. I don't remember.

Q. How much treasury stock did the company have?

A. How much did they have?

Q. Yes, at any time—what is the greatest amount that it has had?

A. I think the greatest amount at any one time was 600,000 shares.

Q. It is incorporated for \$2,000,000.00 isn't it?

A. Yes, sir.

Q. What is the par value of the shares?

A. \$1.00.

Q. Was there ever any more than \$500,000.00 all told in the treasury?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. How much more?

A. I could not say.

Q. Can you tell approximately?

A. No, I could not tell. There were several million shares put in the treasury after that.

Q. Was it sold?

A. Some of it.

Q. How much was realized from the sale of that treasury stock?

A. I could not say.

Q. You are treasurer, are you?

A. Yes, sir.

Q. Didn't you keep track of it?

A. Yes, I did.

Q. Can you tell by going to the office?

A. I have not my books in the office, no.

Q. Where are the books?

A. My books are in Winnipeg.

Q. Aren't the books of the company here in Spokane?

A. Some of them, yes sir.

Q. What are not here?

A. The stock books are here.

Q. Where is the office here in Spokane?

A. In the Hyde Block.

Q. What room?

A. 615.

Q. You said there had been some work done on the Wickman, didn't you since the patent?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. You said something about a flume bed?

A. There was a flume bed there I believe.

Q. Where was the flume bed built?

A. Up near the falls.

Q. About how far down from the end line, east end line of the Peabody?

A. I could not say that.

Q. Was it below the lower falls?

A. I could not say that.

Q. Haven't you ever seen it?

A. I have seen it from a distance, yes sir. I think I was on it at one time, but I don't remember just the location of it.

Q. Do you mean to say there is a flume bed in there and you don't know where it is?

A. I know where, yes, approximately, but I don't know where it is comparatively with the lines of the placer grounds.

Q. You know where the corner, the eastern corner, No. 1, of the Wickman placer is?

A. I know pretty near, approximately where, yes sir.

Q. That is the same corner as No. 2 of the Peabody, isn't it?

A. According to that map, yes sir.

Q. And is that flume bed that you speak of near the river?

A. It is along the Nespelem river, yes sir

Q. On what side?

A. On the north side.

Testimony of G. S. Wickman.

Q. Is it east or west of the line following from corner No. 2?

A. I could not say.

Q. What is the nature of this flume bed?

A. Blasted out of the rock.

Q. Blasted out of the rock?

A. Yes sir, along there, comes out from the dam.

Q. You have seen it, haven't you?

A. I have been up on there, yes sir.

Q. Where does it run to?

A. I don't know just where it ends. I have been there, but they have been working on it since I was there.

Q. When did they cease work on it?

A. I could not say.

Q. When did they commence work on it?

A. I could not say.

Q. How much did it cost?

A. I could not say.

Q. That is all the work you know of being done on that claim since the patent, isn't it?

A. There has been a man working there some since the patent, that is all I know of, all that I have seen though.

Q. Did you have anyone taking off sage brush?

A. Not to my knowledge. I didn't know that there was anyone doing it.

Q. Did you know that anyone was doing it?

A. No, sir.

Q. The land except where the gravel is, taking in the

Testimony of G. S. Wickman.

greater part of the Wickman and the western part of the Peabody, is a sandy loam, isn't it?

A. Some sand there, yes sir.

Q. It is of a character that will grow agricultural products?

A. I could not say.

Q. Are you familiar with the agricultural lands along that river?

A. No, sir.

Q. Did you say you found any gravel on the Wickman?

A. Yes, sir.

Q. Where did you find it?

A. Along this bank.

Q. Between corners 3 and 4?

A. Yes sir,—also in a gully over back here (indicating), somewhere.

Q. Well, was this after it broke off into the Columbia?

A. The bank is back—where it goes down to the Columbia river.

Q. The edge, I will call it, of the bank is north of the line, is it?

A. It is on this side of the line.

Q. Northeast of the line generally?

A. Yes, sir.

Q. How much northeast of it is it?

A. I could not say just how far.

Q. Approximately?

A. It is not very far from the line.

Testimony of G. S. Wickman.

Q. You mean by that ten yards or twenty yards?

A. I would not say.

Q. And that line then falls—if it was dropped to the surface of the ground it would drop below the ordinary level of the Wickman?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And there is exposed there, is there not, and off from that bank on that edge of the Wickman, a ragged, broken space, is that right?

A. It is an open space, yes sir.

Q. Is this formed by caving?

A. By caving and then sliding down.

Q. How far down did you find the gravel on the face?

A. I should judge that it was about 10 or 12 feet from the top.

Q. You say you found it on the surface in a gully that runs across there?

A. Yes, on the side of the gully and also in the bottom of the gully.

Q. Did you see any prospect holes—holes on the Wickman?

A. Yes, sir.

Q. Those holes have not been, as far as you know, have not been done anything with lately or since that time, have they?

A. Not to my knowledge, no.

Q. How long were you up there in 1903?

Testimony of G. S. Wickman.

A. I cannot say how many days. Probably a week or ten days.

Q. You were at the other times on the lode claims, weren't you?

A. I was on the lode claims, yes sir.

Q. You say you brought your samples down in 1903 in a small tobacco pouch?

A. I brought the samples down, yes, in a tobacco pouch, I made the sample and made an assay.

Q. Who made the sample?

A. It was taken out of the pan that I panned down, Mr. Early and myself.

Q. Anyone else have anything to do with it?

A. I don't think so.

Q. That was the concentrates from the pans that you and Mr. Early made?

A. Yes, sir.

Q. There were colors in that, were there?

A. Yes, sir.

Q. Could you see them with the naked eye?

A. Yes, sir.

Q. How large a tobacco pouch was it?

I. Could not say. Just an ordinary tobacco pouch.

Q. Did it hold as much as that inkwell will hold (counsel indicates an inkwell, the interior of which is about one and three-fourths inches deep and one and a half inches in diameter around)?

A. I could not say whether it did or not. Probably it did more.

Testimony of G. S. Wickman.

Q. How long were you on the claims in 1906 when you came up there?

A. On this placer ground?

Q. Yes, sir.

A. Spent a day there.

Q. How much actual time did you put in on the ground?

A. Oh we were around there 4 or 5 hours, I guess probably.

Q. Where did you pan that day?

A. In different places.

Q. Confined yourself to the Peabody on that day, didn't you?

A. What is that?

Q. You confined your panning to the Peabody?

A. I think that we did. I don't think that we panned any on the Wickman. I am not sure about that.

Q. You said on direct examination, did you not, that you didn't pan any on the Wickman?

A. I think I said I didn't think we did. I don't know as I stated positively. That is my remembrance of it that we didn't.

Q. You said on direct examination that you could not tell where or any particular place that you panned on that day.

Q. I could not, no.

Q. You don't know how many blanks were in the pans, do you?

A. No sir, I do not.

Testimony of G. S. Wickman.

Q. You don't have any specific recollection of how colors you saw that time, have you?

A. No, I could not say just how many. I saw enough though so that I was satisfied.

Q. As to what?

A. Satisfied we had a good property.

Q. That is a property that could be worked—made to pay?

A. That was my opinion, yes sir.

Q. By hydraulicking or panning?

A. I don't see how a man could make any money by sitting down with a pan and panning. I could not see it anyway.

Q. And yet you don't know any more about hydraulic mining than you have already stated?

A. Only what I had heard other people say that were supposed to know those things.

Q. What were you doing there on that trip, Mr. Wickman?

A. Just went to make a general observation of the property.

Q. Why did you pan on that trip?

A. I don't know why I panned on that trip any more than any other time; because I was looking over the property and inspecting it.

Q. You already knew that there was a paying proposition?

A. Yes, sir.

Q. Then what could have been your object in panning again?

Testimony of G. S. Wickman.

A. I don't know why my object was any more than making a general inspection of the properties.

Q. You knew that there was just as much there as there ever had been?

A. I suppose there was, yes sir. Might be more.

Q. You had already ascertained that there was some there?

A. Yes, sir.

Q. Did you make any report of that visit to any one?

A. No written report that I know of. No. I reported in a general way to the officers and to the stockholders on all my trips there.

Q. To what stock holders did you report?

A. To various ones.

Q. What was the nature of your report. I don't ask you to say to what stockholders nor what it contained, but I want to know what the nature of your report was, its character?

A. It was a report on the value of the claims. I verified my previous views of the value of the claims.

Q. And you submitted that report to whom of the officers, Dr. Hudnutt?

A. No, sir. I didn't. I sent it to the president of the company, I guess, was it.

Q. Who was the president?

A. J. M. Hudnutt.

Q. Is he a relative of Dr. Hudnutt?

A. I believe so.

Q. What?

A. A brother.

Testimony of G. S. Wickman.

Q. Does he live in the east somewhere?

A. Yes, sir.

Q. You were requested to make the report, were you?

A. I don't think that I was, no.

Q. You came out there in 1908 last September again, didn't you?

A. Yes, sir.

Q. You did some panning then?

A. Yes, sir.

Q. You panned only on the Peabody at that time?

A. Yes, sir.

Q. What did you come out for at that time?

A. To make a general observation of the company's property.

Q. And report of the values again?

A. I didn't make any report, no.

Q. You did some panning that trip?

A. Yes, sir.

Q. On the Peabody?

A. On the Peabody placer.

Q. But not on the Wickman?

A. No sir, I don't think so.

Q. And what did you pan that time on the Peabody?

A. Mr. Early, our superintendent, was down there and I went down to see him and look the ground over and we done a little panning along the river bank.

Q. That was after this suit was started, wasn't it?

A. Yes, sir.

Q. You knew at that time this suit was pending?

Testimony of G. S. Wickman.

A. Yes, sir.

Q. You did not pan at that time to satisfy yourself if there was gold there?

A. No, sir. I was satisfied of that before.

Q. That was the time that you say there was found between you and Mr. Early or Mr. White, I have forgotten which, two small pieces of gold that were connected?

A. I don't think that was the time we found gold, yes it was. It was in September we found a piece of that kind.

Q. I believe you just now stated you did not make any report on that?

A. Only in a general way.

Q. At the different times when you were out there, have Dr. Hudnutt and Mr. Early and Mr. White always been with you?

A. Not all of them, no.

Q. You panned again when you went out there in 1909, this month, didn't you?

A. Yes, sir.

Q. And who were with you then?

A. Dr. Hudnutt and Mr. White.

Q. And what did you pan for that time?

A. To see what we could find.

Q. Did you have any doubt about the claim?

A. I didn't have any doubt about there being gold there, no.

Q. In paying quantities?

A. That was my belief, yes sir.

Testimony of G. S. Wickman.

Q. Was it just out of amusement that you panned that last time or to confirm your former opinion?

A. We panned to see what we could get.

Q. And to confirm your former opinion?

A. To strengthen it, yes sir.

Q. It could have been strengthened then?

A. It certainly could, and was strengthened at that time.

Q. Now you said Mr. White got a nugget on that trip. Who is Mr. White?

A. Mr. White is a resident of the neighborhood there.

Q. Whereabouts does he live?

A. In Nespelem. As far as I know.

Q. What is his business?

A. Miner I understand.

Q. He is the Mr. White here?

A. Yes, sir.

Q. Where did he get the nugget?

A. He and I both took some gravel out of the dump and carried it down to the Nespelem river out of the bank.

Q. What bank?

A. The bank of the Nespelem river. There was a gravel bed back from the bank, back from the Nespelem river.

Q. Where was the dirt taken from?

A. Taken out of the gravel.

Q. On what claim?

A. On the Peabody.

Q. Whereabouts on the Peabody?

Testimony of G. S. Wickman.

A. Near—I should judge about 100 yards from the cabin.

Q. Can you look on this map and show about where it was?

A. I cannot tell where the cabin is exactly, but somewhere in this neighborhood here (indicating).

Q. That is a little more than half way down from the dam to the Columbia?

A. I should think about three-quarters of the way down to the river.

Q. Did you take from here (indicating) any of these times that you have been speaking of along the river bank?

A. No, sir.

Q. Referring to that strip between the river and the Columbia along the Wickman?

A. I never did. Not that I know of.

Q. You panned on the Wickman at that time, you and Mr. White?

A. Yes, sir.

Q. Northwest of corner 4?

A. Yes, sir.

Q. Found one color?

A. Found more than one color.

Q. Didn't you state on your direct examination that you found one color personally?

A. I might, yes sir.

Q. Is it correct, that statement?

A. I had one pan that had one color in it.

Testimony of G. S. Wickman.

Q. Then you mean to say now that you found more than one color personally?

A. Not personally, no. I only panned one pan.

Q. Why didn't you pan more than one pan on the Wickman?

A. Because Dr. Hudnutt was using one pan and Mr. White was using the other and I watched them.

Q. Didn't you want to confirm that belief,—anyway to strengthen it?

A. Strengthen it just as well by seeing them pan as I could by panning myself.

Q. Didn't think you could strengthen your belief by panning the strip between the Columbia and the Wickman?

A. I never thought of it, no.

Q. You never thought of it?

A. No.

Q. About what is the height, how big a fall is there between the dam and the lowest part of the Nespelem river to the west?

A. I could not say.

Q. How many falls are there?

A. I could not say.

Q. You have been up there and down it, haven't you?

A. I have, yes sir.

Q. Never paid any attention to how many falls there were?

A. No particular attention, no.

Q. How much did the treasury stock of the company

Testimony of G. S. Wickman.

sell for that you mentioned being something in addition of 600,000 shares?

A. How much did it sell for?

Q. Yes, per share.

A. Different prices.

Q. What different prices?

A. Several different prices. Two and a half cents up to twenty-five cents.

Q. Two and a half cents up to twenty-five cents,—do you know how much was realized on it?

A. I don't know.

Q. Have you been treasurer of the company all this time since 1903, 6 years?

A. Yes, sir.

Q. And you didn't know what the assets of the company were?

A. I knew what they were. I have got it all on the books here. I haven't it all in my head, no.

Q. You know you were coming out to testify, didn't you?

A. No sir, I did not.

Q. You knew that the case was coming off, didn't you?

A. I expected it to come off sometime. I didn't know when.

Q. You stated about the financial condition of the company in a general way to Mr. Blair on direct examination and if you can tell me what its financial condition was in 1903 as to how much money it had I wish you would.

Testimony of G. S. Wickman.

A. Sometimes we didn't have any.

Q. Can you tell anything about 1904?

A. The same fix in 1904, at various times.

Q. 1905, 1906, 1907 and 1908?

A. That is the way that it was right along ever since the company was organized—we were up and down.

Q. How far were you ever up?

A. Never any higher than we are right now.

Q. Have you ever discussed the proposition of furnishing power or energy or anything of that kind from the water power on the Peabody?

A. Furnishing power for what?

Q. For power to anyone else?

A. I never have discussed it, no.

Q. You have never discussed it with anyone?

A. No sir, not to my knowledge.

Q. The company owns 15 or more claims, does it not?

A. Somewhere around there, yes sir.

Mr. AVERY: That is all.

REDIRECT EXAMINATION

By Mr. BLAIR:

Q. State whether or not it is true that sometimes intermixed with the gold there was garnets and rubies?

Mr. AVERY: I object to that as incompetent and immaterial and not direct examination.

Mr. BLAIR: You opened the question of the difficulty of detecting the gold among the sand.

A. There is some little red rubies, we call them in the sand.

Testimony of G. S. Wickman.

Q. Were you able to detect the gold from those stones?

A. Yes, sir.

Q. And to distinguish the gold?

A. Yes, sir.

Q. State whether or not you had ever heard of the Columbia river as a gold bearing river?

A. I had, yes sir.

Q. Did you, before going to the Nespelem country?

A. Yes, sir.

Q. State whether or not, Mr. Wickman, in locating the cabin and ravine and objects and so on on the two placers, you are stating them exactly, or approximately?

A. Approximately. Stating them to the best of my recollection. I could not be positive about the direction or the distances.

Q. State whether or not there is or is not any marked difference between flakes and specks of gold as found on these two placers?

Mr. AVERY: I object as the witness has not qualified himself to answer.

A. There is not in my opinion.

Q. State whether or not the human eye can detect the difference between a flake and a speck of gold as found upon those placers?

A. There are two kinds of gold found there.

Q. Answer the question,—yes or no?

A. Yes, sir.

Q. There are two kinds of gold found there you stated?

Testimony of G. S. Wickman.

A. Yes sir, appears like two kinds, yes sir.

Q. Name them?

A. There was a speck and a flake.

Q. At the time of your first visit to the placer you heard the opinion expressed by others that it could be worked by hydraulic methods?

Mr. AVERY: I object to that as being manifestly leading and manifestly improper in that it calls for hearsay evidence and conclusions and everything that is objectionable.

A. I did.

Q. You did?

A. I did, yes sir.

Q. Did you believe those expressions of opinion?

Mr. AVERY: I object to that on all the grounds that exist.

A. I did.

Q. Now, Mr. Wickman, do you know whether or not water will fall?

A. I do.

Q. Do you know it falls harder from a greater distance than from a small distance?

A. It does, yes sir.

Q. Do you know that falling water will dislodge dirt and sand?

A. Yes, sir.

Q. Falling water is used for hydraulicking?

A. Yes, sir.

Q. Mining propositions?

A. Yes, sir.

Testimony of G. S. Wickman.

Q. Do you know that this river at this dam is at a considerable elevation above the Peabody placer and a good deal higher than the Wickman placer?

Mr. AVERY: I object to this as leading in addition to all the other objections I have stated.

A. Yes, sir.

Mr. BLAIR: It is harmless.

Mr. AVERY: That is probably true.

Q. And state whether or not, Mr. Wickman, you know that water will fall more cheaply upon land and dislodge it than when it is pumped and cast upon land with steam power.

Mr. AVERY: I object to that as leading and incompetent and the witness has not qualified himself to state.

A. I do, yes sir.

Q. Did you retain the detailed account of the pecuniary transactions of the company within your memory and so forth?

A. No, sir.

Q. In your examination in chief you stated generally the financial condition.

Mr. AVERY: I object to that as leading.

A. Yes, sir.

Q. Calling your attention, Mr. Wickman, to your testimony on cross examination with reference to that nugget testified to by you as having been found by you and Mr. White, or by Mr. White, at what time was it found?

A. It was in July of this year.

Q. I think you stated on cross examination that it was in September of 1908.

Testimony of G. S. Wickman.

Mr. AVERY: I object to Mr. Blair testifying.

A. It was in July of 1909.

Q. If you did state in your cross examination that it was in September of 1908, state whether or not that is or is not in error?

Mr. AVERY: I object to that as leading.

A. It was in error.

Q. What did you hear about the Columbia being a gold bearing river?

A. I heard that the Columbia had been mined in various places.

Q. On the banks and bars of it?

A. On the bars of the Columbia river.

Q. And that it pans more gold, more or less?

A. I heard that, yes sir.

Q. You believed that to be true?

A. I did. I had no reason to question it.

Witness excused.

Mr. AVERY:

The witness says that the literature and printed matter I inquired for can be just as well secured from Dr. Hudnut as himself, and it is understood I take it, Mr. Blair, that Dr. Hudnutt being present and heard my inquiry I will not have to repeat it.

Mr. HUDNUTT: Any literature that we have you can have.

Mr. AVERY: I assume the doctor refers to the prospectii?

DR. HUDNUTT: Anything to which you refer.

Testimony of J. R. Gilfellen.

At this point, 3 o'clock P. M. July 14, 1909, the hearing was adjourned until 10 o'clock A. M. July 15, 1909.

Spokane, Wash., July 15, 1909.

10:30 o'clock A. M.

Hearing resumed pursuant to adjournment.

J. R. GILFELLEN, a witness called on the part of the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. Mr. Gilfellen, will you please state your name?

A. J. R. Gilfellen.

Q. Where do you live?

A. On the south half of the Colville Reservation.

Q. How long have you lived there?

A. Since 1898.

Q. Beg pardon?

A. Since 1898.

Q. State what you have been doing since you have been there?

A. Mining.

Q. What is your occupation?

A. Miner.

Q. How long have you pursued the occupation of mining?

A. 20 years.

Q. State where you have followed that occupation, what places?

A. In Alaska, Mexico and the United States.

Q. Mexico—New Mexico or old Mexico?

A. Old Mexico.

Testimony of J. R. Gilfellen.

Q. And at what places in the United States?

A. Washington, Oregon, California, Colorado and Idaho.

Q. What has been the nature of that mining?

A. How is that?

Q. What kind of mining?

A. Both placer mining and quartz mining.

Q. Gold placer mining?

A. Yes, sir.

Q. Gold placer mining?

A. Yes, sir.

Q. Where have you been gold placer mining?

A. In Alaska, Oregon and Old Mexico.

Q. Have you done any placer mining and prospecting in Washington?

A. Yes, sir.

Q. State where?

A. On the Nespelem river—on the Columbia river and Cedar Mountain.

Mr. AVERY: Cedar Mountain?

A. Yes, sir.

Q. State the character of the placer mining in Oregon?

Mr. AVERY: I object to that as immaterial.

A. Hydraulic works.

Q. Where was that?

A. In the John Day Basin.

Q. How long were you there?

A. Two seasons—about three months each season.

Testimony of J. R. Gilfellen.

Q. What was the character of the work that you did in Oregon at the John Day Basin?

A. The first season I was on bedrock and the second season had charge of the work.

Q. The first season?

A. Cleaning bedrock.

Q. State whether or not during that time you did panning?

A. Yes, sir.

Q. How frequently?

A. Every day the second season.

Q. Have you done any panning at other places?

A. Yes, sir.

Q. What is the nature of the John Day Basin with relation to the character of the soil and presence of water and general features?

A. Well, the soil is a clay gravel.

Q. What water did you use upon it—what head of water and so on?

A. Supposed to be about 1000 inches.

Q. What head?

A. Inside a 50 foot fall.

Q. You said you had charge of the work the second year?

A. Yes, sir.

Q. And what were your duties in charge of the work?

A. Duty was to see—to keep the men to work and look after all the hydraulic workings.

Q. Where else did you do panning, placer panning?

A. I panned in Oregon.

Testimony of J. R. Gilfellen.

Q. Beg pardon?

A. In Oregon and Alaska and Mexico and also I prospected in other places, but in them workings, we worked in all of them.

Q. What was the character of the work in Old Mexico?

A. Placer mining; I worked on bedrock and helped to use the giant.

Q. You say you worked on bedrock—what did you do?

A. I mean cleaning the bedrock where the gold settles on it after the hydraulic is used on it,—what gold is left there that will not hydraulic off is scraped up sometimes—sometimes have scrapers of different kinds, and sometimes use a shovel and very often a broom is used.

Q. Are you familiar with all the processes involved in hydraulicking gold from placers?

A. Yes, sir.

Q. Are you familiar with the requirements of hydraulicking with reference to the presence of water, head of water, soil of placer, and matter of dump, and general requirements?

A. Yes, sir.

Q. How long were you placer mining or prospecting in Alaska?

A. About 7 years.

Q. At what place or places?

A. At Circle City and Birch Creek.

Q. And what was the nature of your work there,—what was the character of your work there?

Testimony of J. R. Gilfellen.

A. Well, I have property of my own there and worked it and I worked for other parties there.

Q. What was the—was that a hydraulic proposition?

A. No sir, that was sluice boxes.

Q. Sluice boxes?

A. Yes, sir.

Q. You did panning?

A. Yes, sir.

Q. State whether or not when you panned in Alaska, were you able to save the particles of gold from the sand?

A. Yes, sir.

Q. And dirt?

A. Yes, sir.

Q. State whether or not when you panned in Oregon you were also able to save the particles of gold from the dirt and sand?

A. Yes, sir.

Q. Now, Mr. Gilfellen, when did you first come to Washington?

A. How is that?

Q. When did you first come to the state of Washington?

A. In 1872.

Q. And what was your occupation thereafter with reference—did you engage in mining thereafter up until 1898?

A. Not for a couple or three years. Then I went to it.

Q. Where did you mine—where did you engage in it?

Testimony of J. R. Gilfellen.

A. The first work I done was in California. After I came to Washington I went to California.

Q. Was that a gold placer proposition?

A. That was a gold quartz claim.

Q. Have you in other than the instances that you have testified to in Old Mexico and Alaska and Oregon mined or prospected any gold placer propositions?

A. No, sir.

Q. When did you first go to the Nespelem country?

A. In 1898.

Q. What part of the year?

A. If I remember right it was in March.

Q. What was your purpose in going to that country?

A. To prospect for quartz and plaster.

Q. Were you following your occupation of miner at that time?

A. Yes, sir.

Q. I will call your attention to complainant's exhibit No. 4 and ask you whether you are familiar with the properties set forth thereon, viz: the Wickman placer and the Peabody placer, being surveys No. 686 and No. 680 respectively?

A. Yes, I am acquainted with the ground.

Q. You are acquainted with those properties?

A. Yes, sir.

Q. You are acquainted with their general outlines upon the ground?

A. Yes, sir.

Q. You are acquainted with the posts and corners?

Mr. AVERY: I object to your leading the witness.

Testimony of J. R. Gilfellen.

Q. You are acquainted with the posts and corners?

A. I have been to a part of them, not to all the posts but I am acquainted with all the ground.

Q. Do you know how the lines—state whether or not you know how the lines of the Wickman placer run with relation to—state whether or not there are back of the Wickman placer any line of hills?

A. How is that?

Q. State whether or not there is back of the Wickman placer any hill?

A. Yes sir, there is.

Q. State whether or not—do you know the relation of the relative position of the north line of the Wickman placer with that line of hills?

A. Yes, sir.

Q. Do you know the position of the Nespelem river upon the Peabody placer?

A. Yes, sir.

Q. And do you know the relation of the south line of the Peabody placer with relation to that river?

A. The south line?

Q. The south line?

A. Yes, sir.

Q. Have you a knowledge also, Mr. Gilfellen, of the area included between the Columbia river and corner No. 3 and corner No. 4 of the Wickman placer?

A. Yes, sir.

Q. Being the area included—?

A. From the grant.

Testimony of J. R. Gilfellen.

Q. Now, Mr. Gilfellen, state what you did when you went to Nespelem in 1898?

A. When I went down onto this ground?

Q. Yes, sir.

A. I was prospecting for plaster.

Mr. AVERY: Plaster?

A. Prospecting for gold, I was prospecting for quarts—plaster gold.

Q. Did you prospect upon these properties?

A. Yes, sir.

Q. When you said that you prospected what do you mean?

A. I mean we panned—we panned gold upon there.

Q. State the length of time—you said you panned upon these properties?

A. How is that?

Q. You said you panned upon these properties?

A. Yes, sir.

Q. And what length of time did you consume in that panning?

A. Well, we were there somewhere from a week to ten days, we camped on the ground and worked all over it or nearly all over it.

Q. And where did you camp do you recollect on the property?

A. Well, just south—a little bit to the east of where the Hudnutt cabin stands and opposite Nespelem creek.

Mr. AVERY: I object to that unless he states where the Hudnutt cabin stands.

Q. State where the Hudnutt cabin stands?

Testimony of J. R. Gilfellen.

A. The Hudnutt cabin stands somewhere about here (indicating). As near as I can tell on this plat, just about there (indicating).

Q. With relation to the mouth of the Columbia river and dam at this end (indicating)?

A. How is that?

Q. How far from the mouth of the Nespelem river up is that cabin?

A. About half a mile.

Q. About half a mile?

A. Yes, sir.

Q. Now, Mr. Gilfellen, upon this map you will find the figures 2678 and 2687 8-10, being upon the line running from corner No. 6 to corner No. 7 and from corner No. 7 to corner No. 8 respectively of the Peabody placer with relation to those the distance—?

A. The Hudnutt cabin I would judge stands along about in here somewhere (indication), just a trifle over half way from the mouth of the river to the falls as near as I could tell by looking at it and judging it.

Q. And on what side of the river is that cabin?

A. How is that?

Q. The cabin is on what side of the river, north or south side?

A. On the north side.

Q. Where did you pan at that time?

A. Well, we commenced down to the mouth of the river and panned on both sides.

Q. What river?

Testimony of J. R. Gilfellen.

A. Nespelem, and panned about half a mile up on the river.

Q. With relation to the cabin where did you pan now?

A. How is that?

Q. With relation to the cabin where did you pan along the Nespelem commence?

A. We panned around about where the cabin stands and down on the flat and on the high gravelly bench on the south side.

Q. I am just asking now about the river?

A. The Columbia?

Q. Along the Nespelem, I say, with relation to the cabin now, on the river, where did your panning end, above or below?

A. Below until the Columbia river,—from that down, and a little above it on the river.

Q. That is, you panned from the mouth to a little above the cabin?

A. Yes, the cabin.

Q. State whether or not you found any gold in that panning along the river?

A. Yes, sir.

Q. State the character of the gold found?

A. Well, we found fine gold and coarse gold, both.

Q. When you speak of coarse gold what do you mean in point of size or shape?

A. How?

Q. When you speak of coarse gold as distinguished from fine gold, what do you mean?

Testimony of J. R. Gilfellen.

A. I mean coarse gold is gold that you have got no trouble in saving in panning. Fine gold is flour gold that is hard to save.

Q. Was this gold visible to the naked eye?

A. Yes, sir.

Q. Now, Mr. Gilfellen, speaking now with reference to that strip of land shown upon complainant's exhibit No. 4 lying south of the Nespelem river?

A. This strip here (indicating)?

Q. That strip south of the Nespelem, state the topography of the strip, beginning at the river and running up towards the falls?

A. From the Columbia river?

Q. Yes, sir.

A. On the south side a very high bank of gravel for about half a mile up.

Q. What is the height of that gravel bank?

A. Well, we estimated at the time we was there that it was fully 60 feet of gravel there that could be washed.

Q. Where does that gravel begin with relation to the stream, the stream of the river, Nespelem river?

A. I don't understand you?

Q. State whether or not that gravel bank does or does not begin at the edge of the river?

A. Begins right close up to the bank of the river.

Q. State whether or not it extends to the south line of the Peabody placer as shown on the plan?

A. Well, it extends right close up to it and a little clay comes off for 25 or 30 feet, the clay rises there, and the gravel goes from there down to the Columbia.

Testimony of J. R. Gilfellen.

Q. Is that a dyke of clay or what is the nature of it?

A. There seems to be a chunk washed up there.

Mr. AVERY: Where is the bank that you refer to now?

A. How is that?

Mr. BLAIR: Q. Where is the bank you are not referring to?

A. Commences down here by the river (indicating) and runs up here (indicating).

Q. That is, between corners No. 6 and No. 7 of the Peabody?

A. I don't understand the corners of it.

Q. Well, it extends down from corners 6 and 7?

A. Commences here (indicating) by the Columbia river and runs up pretty close to the Peabody claim.

Mr. AVERY: I want you to show it so it will be on the record.

A. From place marked corner No. 6 to corner No. 7 on the Peabody, yes sir.

Q. That is where it is?

A. Yes, sir.

Mr. BLAIR: Q. Did you state that you panned that bank?

A. Yes, sir.

Q. At what place did you pan it?

Mr. AVERY: I object to that as repetition. He has already stated.

Q. At what place on that bank did you pan?

A. Well, we panned a good many places, different places. I cannot remember just how many places it

Testimony of J. R. Gilfellen.

was, but we were there looking around the proposition and we panned a good many different places along there.

Q. Did you pan near the stream?

A. Yes, sir.

Q. Did you pan high up on the bank?

A. Yes.

Q. State whether you found any gold in those pannings around the bank,—upon that bank?

A. Yes, sir.

Q. What did you find?

A. We found gold in nearly every pan we took out of the gravel bank.

Q. What was the character of the gold that you found there?

A. The character of the gold in the gravel bank is generally coarse.

Mr. AVERY: I move to strike out the answer as not responsive.

Q. Did you find any flour gold there, any flake gold, any flour gold I should say?

A. Yes, sir.

Q. Did you find any coarse gold?

A. Yes, sir.

Q. Any fine gold?

A. Yes, sir.

Q. Was this gold visible to the naked eye?

A. Yes, sir.

Mr. AVERY: I will have to object to any more questions of such leading character. I don't mind a few of them.

Testimony of J. R. Gilfellen.

Q. Now, Mr. Gilfellen, you have stated—state whether or not you panned on any other part of the Peabody placer?

A. Yes, we panned on the north side of the Nespelem river.

Q. At what points?

A. Well, we panned up from the Columbia river up as far as where the cabin is on the North side,—about half a mile up from the Columbia river.

Q. State whether or not you panned at other places on the Peabody than that just mentioned?

A. Yes, sir.

Q. Where?

A. We panned all across the Peabody to the north line.

Q. With what results?

A. We found gold right along when we got into the gravel.

Q. Where did you get into the gravel,—if you did?

A. We got into the gravel very near every place we tried,—we dug down until we got into the gravel.

Q. Did you pan in any gulches on the Peabody?

A. Yes, sir.

Q. With what results?

A. How is that?

Q. With what results?

A. We found gold.

Q. State the character of the gold?

A. Well, it was flour and coarse gold both.

Testimony of J. R. Gilfellen.

Q. Now at that time, Mr. Gilfellen, state whether or not you panned upon the Wickman placer?

A. Yes, sir.

Q. At what points?

A. Well, we panned along about the center of the claim, and from the center to the Columbia river, the whole length of the Wickman property upon the river.

Q. How is that?

A. We panned along about half way up the Wickman property down and along the Columbia to the lower end of the Wickman property. There is a deep gulch comes down in here (indicating).

Q. Where does that gulch just referred to come down upon the Wickman?

A. Comes right around the center, along here (indicating); at corners, or near corners 2 and 3, just comes right down across the end of it.

Q. Out near corners No. 2 and 3?

A. Yes, sir.

Q. You stated that you panned along the Columbia river?

A. Yes, sir.

Q. Indicate upon this plan?

A. Any number of places along the bank where the bank had cut,—along the gravel.

Q. Do you refer to that area excluded from the patent?

A. Yes, sir.

Q. And lying between corners No. 3 and No. 4 of the Wickman and the Columbia river?

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. State with what results on that strip along the Columbia river?

A. We found gold every place that we panned down the Columbia river where we went into the gravel,—any place we found gravel we found gold.

Q. With what results if any, in the gulch referred to running near corners 2 and 3 of the Wickman?

A. We found gold.

Q. State the nature of the gulch or gully?

A. Well, it is a deep gulch that comes down from the mountains that you cross there.

Q. Do you know the direction in which that gulch runs from the Wickman?

A. How is that?

Q. Does the gulch run back into the country from the Wickman?

A. Yes, sir.

Q. How far, if you know?

A. Well, it is over a mile back into the foot-hills.

Q. State the nature of the gulch as far as soil and surface,—appearance of sand and gravel and so on is concerned?

A. The gulch in general is gravel.

Q. State if you know the depth and thickness of the gravel as it appears in the gulch?

A. We didn't get to the bottom of the gravel. There was seven or eight feet of gravel generally that we were working in,—that we panned on.

Testimony of J. R. Gilfellen.

Q. Is that ravine,—does it empty into the river—does it open into the Columbia river?

A. Yes, sir.

Q. Do you know the height of the gulch,—the depth of the gulch as it opens into the river?

A. I should judge 35 or 40 feet in depth.

Q. State if you know the character of the gravel deposit, if any at that point?

A. Yes, there is gravel there.

Q. Do you know the thickness of the gravel at that point?

A. Well, where it enters into the river 25 or 30 feet of gravel.

Q. Now did you pan at any other places on the Wickman than those mentioned?

A. How is that?

Q. Did you pan at any other places on the Wickman than those mentioned?

A. Well, we panned across the line from—the full length of it here, where it was just run down there so we could get through the sand a little easier and get into the gravel.

Q. With what results?

A. We found gold right along.

Q. What is the nature and kind of gold?

A. Both fine and coarse.

Q. Did you at that time do any panning outside the limits of these placers?

A. How is that?

Testimony of J. R. Gilfellen.

Q. Did you at that time do any panning outside the limits of these placers?

A. Yes, sir.

Q. Where?

Mr. AVERY: I object to that as immaterial.

Q. Where?

A. How?

Q. Where?

A. Both above and on the Columbia river below them.

Q. State whether or not there is in the Columbia river an island?

A. There is an island runs down about that far (indicating) and comes up here (indicating plat).

Q. How is that island formed?

A. How is that?

Q. That is just off the Wickman placer, just off the strip called the Wickman placer?

A. It is out in the middle of the river.

Q. How far from the Wickman placer?

A. Just right opposite it.

Q. How far in number of feet?

A. 700 or 800 feet, something like that.

Q. Did you pan there?

A. Yes, sir.

Q. When?

A. In 1898.

Q. On this trip?

A. Yes.

Q. With what results?

Testimony of J. R. Gilfellen.

A. We found coarse gold.

Q. Were you alone on this trip, Mr. Gilfellen?

A. No, sir.

Q. Who was with you?

A. A man by the name of Peterson was with me panning.

Q. Now, Mr. Gilfellen, calling your attention to the tract of land south of the south line of the Peabody placer?

A. We panned at the south line.

Q. As shown upon complainant's exhibit No. 4?

A. We panned out in there (indicating).

Q. What is that?

A. That is gravel and a little lake.

Q. What is this area south of the south line referred to?

A. It is a bar—sometime on the Nespelem—all connected together, a deposit of gravel, just some gravel and gold all through the gravel so far as we went.

Q. State whether you panned upon that?

A. Yes.

Q. At what points?

A. Several points. There is a small lake out in here. We dug at the shore—high water mark of the lake and in the gravel, and panned there.

Q. How far is that distant from the south line of the Peabody placer?

A. Well, somewhere in the neighborhood of 200 feet.

Q. With what results?

A. We found gold there.

Testimony of J. R. Gilfellen.

Q. What is the name of the lake?

A. I never heard any name for it. Just a small little pool.

Q. I mean of that area there, that flat, what is that flat called at the present time?

A. At the present time it is called Condon's flat.

Q. Now at that time, Mr. Gilfellen, did you do any panning on the Columbia river?

A. Yes, sir.

Q. At what places?

Mr. AVERY: I object to that as immaterial.

Q. At what points?

A. Well, we started in panning at the mouth of the San Poil river and panned along the river until about eight miles below the Nespelem.

Q. With what results?

A. We found gold in nearly every place we tried.

Q. What was the character or kind of gold found?

A. Both fine and coarse.

Q. State whether or not you had any purpose in this panning?

A. Yes, had a purpose.

Q. State what was your purpose?

Mr. AVERY: I object to what his purpose was as immaterial.

A. We were out looking for a place to use sluice boxes.

Q. My question I direct with reference to your panning upon the Wickman and Peabody placers; state your purpose in doing that panning?

Testimony of J. R. Gilfellen. ·

A. Our purpose was to discover whether there was enough gold there to pay for working.

Q. Work it in what manner?

A. Well, we intended at that time to sluice.

Q. State, Mr. Gilfellen, the character of the falls (I guess I can ask that, Mr. Gilfellen), there are falls upon the water of the Nespelem river?

A. Yes, sir.

Q. At what point?

A. Up in here (indicating).

Q. Near that line?

A. Yes, sir.

Q. Marked "U.S.L.M.No.1"?

A. Yes, sir.

Q. What is the height of those?

A. The upper falls?

Q. At the point "U.S.L.M.No.1" above the Peabody and Wickman placers?

A. I never have measured them. We all estimated it to be about 140 to 150 feet.

Q. What is the flow of the river at that point?

A. I never had a measurement of it.

Q. State whether or not from your experience as a miner it is your opinion there is sufficient flow of water there to hydraulic those placers?

Mr. AVERY: I object to that not only as leading, but as not being a complete question, not definite, distinct and certain; no details are given. I further object on the ground that the witness has not shown himself qualified to answer it. It is incompetent.

Testimony of J. R. Gilfellen.

A. Yes, plenty of it.

Q. State the character of the soil, the surface soil of the Wickman and Peabody placers, if you are familiar with it?

A. It is sand.

Q. State whether or not the soil is adapted to hydraulicking?

Mr. AVERY: I object to that as leading.

A. Yes, sir.

Q. State whether or not you know the configuration of the land back—north of the Wickman placer?

A. How is that?

Q. Do you know the configuration of the land, the ground or hills back of the Wickman placer, and with relation to the dam?

A. Yes, sir.

Q. And falls?

A. Yes, sir.

Q. State whether or not hydraulicking operations could be successfully conducted from—with the water-head at the falls?

Mr. AVERY: I object to that on the ground that it is leading, incompetent; the witness has not shown himself qualified to answer, and the question is so uncertain—so indefinite as to be uncertain what is meant by any answer that could be given to it, and calls for a conclusion of the witness not based on any legal ability to testify.

Mr. BLAIR: I withdraw the question.

Testimony of J. R. Gilfellen.

Q. State your experience in hydraulicking generally in the John Day Basin?

A. How is that?

Q. State your experience generally?

Mr. AVERY: I object to that as incompetent and immaterial.

Q. With reference to hydraulicking in the John Day Basin?

A. I hydraulicked there the two seasons.

Q. What was your personal participation in the hydraulicking at the John Day Basin?

A. The first year I was cleaning bedrock and the second year I had charge of the men.

Q. State whether or not having charge of the men you conducted any of the water application to the soil?

Mr. AVERY: I object to that as immaterial and incompetent and as having been gone over also as much of the subject as is competent, and as leading.

A. Yes, sir.

Q. State the methods of hydraulicking?

A. How is that?

Q. State the methods of hydraulicking adopted by you in the John Day Basin?

A. Well, a dam there with a 50 foot fall and had a pipe to carry the water down to the placer ground for the hydraulickers use on the giant. We had also a sluice and a ditch cut down for to carry the water down to the sluice boxes and clean the bedrock.

Q. Was that successful?

Mr. AVERY: I object to that as immaterial.

Testimony of J. R. Gilfellen.

Q. Was that successful upon the soil of the John Day Basin?

A. How is that?

Q. Was that successful?

A. Yes, sir.

Q. In the John Day Basin?

A. Yes, sir.

Q. State if you know the relative character of the two soils, upon the John Day Basin, and the property in question, with relation to their feasibility for hydraulicking?

A. Well, the John Day Basin is gravel and clay mixed which makes a hard proposition for to cut with the giant; the Nespelem, as far as I have been, it is straight, almost straight gravel and could be very easily hydraulicked.

Q. State if in your opinion it is possible to hydraulic the Wickman and Peabody placers?

A. Yes, sir.

Q. From the dam on the Nespelem river?

Mr. AVERY: I object to that on the ground that it is incompetent, and the witness has not shown himself qualified to answer the question; it is leading and the question is not sufficient definite and certain so that it can be understood by the court.

A. Yes, sir.

Q. State if you know what features are necessary for successful hydraulicking?

A. Yes, I know.

Testimony of J. R. Gilfellen.

Q. State if you know what features are necessary for hydraulicking?

A. Yes, I know.

Q. What are they?

A. The first place you have to have a pipe to carry the water, and second, to have a ditch down across the ground for a sluice head.

Mr. AVERY: Have to have a pipe, did you say?

A. A pipe or flume and have to have a ditch and sluice boxes.

Mr. BLAIR: Q. Is there anything else that is necessary?

A. Practically speaking there is not.

Q. Must you have water?

A. Yes, get water out of the dam—put the pipe in.

Q. Have you that water on these placers?

A. How is that?

Q. Is such water present on these placers?

A. Yes, sir.

Q. Now state whether or not with reference to the disposition of the soil and gravel, whether or not these placers are, for hydraulicking,—whether these placers are or are not well located?

A. Yes, they are both well located for hydraulicking.

Mr. AVERY: I move to strike it out as not responsive unless he meant to answer that.

Mr. BLAIR: I think he did.

Mr. AVERY: All right.

Q. As far as a dump for the sand and gravel after

Testimony of J. R. Gilfellen.

the hydraulicking operation is completed is concerned, how are these placers situated?

A. They are situated to have a good dump.

Q. Where would be that dump?

A. How is that?

Q. Where could that dump be placed?

A. It could be placed in the Columbia river.

Q. Now, Mr. Gilfellen, were you acquainted with the course of the Nespelem river before it enters the Peabody placer?

A. Yes, sir.

Q. Back through the country?

A. Yes, sir.

Q. What is the length of the river before it reaches the Peabody placer, if you know, approximately?

A. It is about, on the main branch, that is about 20 miles in all, about 20 miles to the head of it.

Q. You refer to the main branch?

A. Yes, sir.

Q. Is there another branch?

A. Yes, sir.

Q. What is that called?

A. Little Nespelem.

Q. The Nespelem river is known as—?

A. Nespelem river.

Q. Nespelem river?

A. Yes, sir.

Q. Do you know the character of the country through which the Nespelem runs?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. Until it enters the Peabody placer?

A. Yes, sir.

Q. What is the character of the country?

A. It is a mineralized country.

Q. What minerals?

A. Gold, silver, copper and nickle.

Q. Do you know the nature of the country through which the little Nespelem runs?

A. Yes, sir.

Q. What is the nature of the country?

A. Gold, silver and copper.

Q. State whether or not you have ever investigated this river in a mining way?

A. Yes, sir.

Q. The Big Nespelem?

A. Yes, sir.

Q. In what way?

Mr. AVERY: I object to that as immaterial and incompetent.

Q. In what way?

A. Both prospecting for quartz and plaster.

Q. With what results along the Nespelem river?

A. Found plaster about 13 miles above the plaster grounds.

Q. You say you found placer about 14 miles above the fall of the Nespelem?

A. About 14 miles above the fall of the Nespelem.

Q. You mean placer, do you not?

A. Plaster—

Testimony of J. R. Gilfellen.

Mr. AVERY: I object to your asking the witness what he means.

Q. When you pronounce the word as "plaster" what do you mean?

A. I mean gold.

Q. How do you spell it?

A. How do I spell it?

Q. How do you spell placer?

A. I don't know hardly how it is spelt,—p-l-a-s-t-e-r, I guess and that is the word that is used by prospectors when they are prospecting for plaster.

Q. Did you state that you had prospected along the Little Nespelem?

A. Yes, sir.

Q. With what results?

A. Found gold.

Mr. AVERY: Same objection to that question as to being immaterial and incompetent.

Q. State whether or not you are familiar with the country, the character of the Columbia river so far as its mineral or non-mineral character is concerned?

Mr. AVERY: I make the same objection to that question that it is immaterial and incompetent.

A. Yes, I am acquainted with it.

Q. What did you say?

A. I am acquainted with it.

Q. Asking now with relation to the Columbia river above the Nespelem river, can you state the character of the river?

A. Well, I prospected.

Testimony of J. R. Gilfellen.

Q. What is its character so far as its mineral or non-mineral character is concerned?

Mr. AVERY: I make the same objection.

A. It is mineral.

Q. State what minerals it carries?

A. It carries gold.

Q. Can you state, Mr. Gilfellen, if you know, at that time, in 1898, referring now to 1898 and thereafter, whether or not any common reports existed at and in the vicinity of Nespelem with relation to the mineral or non-mineral character of the Nespelem bar?

Mr. AVERY: I object to that as incompetent and immaterial.

A. Yes, it was reported there was.

Q. What was that report?

A. Reported there was, that there was good diggings there.

Q. When you say good diggings, what do you mean?

A. I mean it was said that there was plenty of gold there to pay to work.

Q. How general was that reputation in that community?

Mr. AVERY: I object to that as immaterial and incompetent.

A. Well, it seemed to be in general with all prospectors of the country.

Q. State whether or not there was such a reputation with reference to the mineral or non-mineral character of the Columbia river?

Testimony of J. R. Gilfellen.

Mr. AVERY: I make the same objection, that it is incompetent and immaterial.

A. It was reported.

Q. Say yes or no.

A. Yes.

Q. What was that reputation?

Mr. AVERY: I make the same objection.

A. The reputation was that there was good workings, good gold that would pay to be worked.

Q. How general was that reputation in that vicinity?

A. Well, it was in general among all the prospectors that I panned with, in talking we would talk about prospecting there, nearly all of them about the bar diggings.

Q. Are you acquainted with any bars on the Columbia river near the Nespelem bar?

A. Yes, a little acquainted with them; know of them having been worked.

Q. State what one, state the one or more with which you are familiar?

Mr. AVERY: I object to that as incompetent and immaterial.

A. Yes, there is a bar at Stevensons.

Q. How far is that from the mouth of the Nespelem river?

A. Somewhere in the neighborhood of about 6 miles.

Q. Have you often seen that bar?

A. Yes, sir.

Q. State whether or not it has been worked?

Mr. AVERY: I object to that as incompetent and immaterial.

Testimony of J. R. Gilfellen.

A. It is worked and was worked before I went there.

Q. How is that?

A. Worked before I went there—had been worked over.

Mr. AVERY: I move to strike that out. The witness has not shown himself competent to say whether it was worked or not.

Q. How do you know it was worked?

A. The dump shows that.

Q. Have you seen it?

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. What was the appearance of the Stevenson bar which indicates to you that it has been worked?

Mr. AVERY: I object to that as incompetent and immaterial.

A. The ground all shows it has been dug up and dump scattered all around over the place shows it has been plaster land there at one time.

Q. Do you know of any other bars near the Nespelem river on the Columbia?

A. Yes, there is one below—Hopkins bar.

Q. Has that been worked?

Mr. AVERY: I object to that as incompetent and immaterial.

A. Yes, sir.

Q. Do you know who worked it?

A. Chinamen.

Q. How?

A. Chinamen.

Testimony of J. R. Gilfellen.

Q. Do you know that fact by reputation?

A. Yes, sir.

Q. Do you know of any placers being worked on the Columbia below the Nespelem?

A. Yes, sir.

Q. Where?

A. Down the Columbia below, a little below there was a prospector, in 1898, went there in the fall and plaster mined until spring.

Q. You say you prospected there?

A. No, there were two prospectors, in mining, plaster mined there from fall until spring on it.

Q. How did they placer mine it, do you know?

A. Panning and rocker.

Mr. AVERY: I object to that and move to strike it out as immaterial as to how these men worked.

Q. Now, Mr. Gilfellen, have you ever panned,—have you ever prospected or panned upon these placers at any time other than in 1898?

A. Yes sir, panned about three weeks ago, was down there and done some panning.

Q. Did you pan on either or both?

A. Yes, panned on both.

Q. Speaking with reference to the Peabody, where did you pan?

A. I panned on the north side of the river, up in about here somewhere (indicating).

Q. Where, about?

A. (indicating) Oh somewhere near this line, post No. 7.

Testimony of J. R. Gilfellen.

Q. With relation to the cabin where did you pan?

A. We panned right almost opposite the cabin, betwixt it and the river or creek—Nespelem creek.

Q. When you say Nespelem creek you mean Nespelem river?

A. Yes, we call it a creek, but you folks call it a river. That is the condition.

Q. With what result on the Peabody?

A. We found gold.

Q. Did you find gold yourself personally?

A. Yes, sir.

Q. What was the character of the gold?

A. The character of the gold we found that day was coarse.

Q. Did you do any panning at that time on the Wickman?

A. Yes, sir.

Q. With what result?

A. Found gold.

Q. Basing your opinion upon the facts to which you have testified with relation to the Peabody and Wickman placer and by their natural features and surroundings testified by you and upon your experience as a miner so testified to, what is your opinion as to whether a reasonable individual would be justified in the expenditure of time and labor in the development of those two placers?

Mr. AVERY: I object to that on the ground that it is incompetent and the witness is incompetent to answer the question, he has not qualified himself,—has not shown himself qualified to answer it and for the further reason

Testimony of J. R. Gilfellen.

that the question is not such a one as is proper to test the main issue in this case.

A. Yes, sir.

Q. What was your answer?

A. Yes, it would pay in my opinion, it would pay to spend money working there, it would pay, a good paying institution.

(Question read.)

A. Yes, I think it would pay.

Mr. AVERY: My objection goes to that question.

Q. Under such circumstances would an ordinarily prudent may be justified—

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. Justified in spending his time and labor thereon in the development of it?

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. Basing your answer upon the same facts—basing your answer upon the same facts?

A. Yes, sir.

Q. Just wait one second—basing your answer upon the same facts set forth in the preceding question,—last preceding question, in your opinion could these placers be worked in such a way as to render a reasonable profit?

Mr. AVERY: I object on the same ground as to the last question.

A. Yes, sir.

Q. Worked by hydraulicking?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. Why didn't you work it by hydraulicking?

A. I hadn't the means to furnish material to go ahead with it.

CROSS EXAMINATION.

By Mr. AVERY:

At this time I would like to ask counsel if he has brought into court the prospectus and reports that I was after yesterday?

By Mr. BLAIR: Not as yet. I will look it up at noon.

Q. How old are you Mr. Gilfellen?

A. 52 years.

Q. Where were you born?

A. Pennsylvania.

Q. When did you come west?

A. In 1872.

Q. How long did you—I believe you said you worked two mining seasons in the John Day country?

A. Yes, sir.

Q. And was that two or three months seasons?

A. About three month seasons.

Q. They hydraulicked there, didn't they?

A. Yes, sir.

Q. You said it was a 50 foot head?

A. Yes, sir.

Q. And took the water down to a place where it was escaping through a pipe?

A. Yes, sir.

Q. Steel pipe?

A. Well, supposed to be iron pipe.

Q. Iron I mean,—it was iron pipe, was it?

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. Of what diameter?

A. What diameter?

Q. Yes, what diameter?

A. To the giant—18 inches.

Q. 18 inches?

A. Yes, sir.

Q. And from the end of the pipe there was some sort of,—there was a nozzle connected with it finally, wasn't there?

A. Finally there was, but there was a hose before the nozzle.

Q. There was what?

A. Hose.

Q. A hose,—I was trying to find out,—a hose connected with this iron 18 inches pipe with a nozzle through which it finally went?

A. Yes.

Q. The water?

A. Yes, sir.

Q. Now how long was this hose?

A. Well, varied in length just as we needed to use it.

Q. Well, how did you shorten it and lengthen it when you wanted to?

A. By taking a part out and putting it back, putting a piece in.

Q. What was it made of?

A. Supposed to be made of rubber and canvas.

Q. What was the diameter,—as near as you can fix it?

A. The hose?

Testimony of J. R. Gilfellen.

Q. Yes.

A. 8 inches.

Q. 8 inches?

A. Yes, sir.

Q. How many men did it take to hold the nozzle?

A. Two men.

Q. Two men?

A. Yes, sir.

Q. The nozzle,—how large around was the nozzle where the water finally escaped?

A. A four inch giant.

Q. Was that what you called it, a giant?

A. Yes, sir.

Q. Was that 4 inches in diameter?

A. Yes, sir.

Q. From one side of the aperture to the other side, about 4 inches?

A. Yes, sir.

Q. How far did that carry the stream of water?

A. How is that?

Q. How far did it carry the stream of water?

A. How far did the pressure throw it?

Q. Yes.

A. Well, we always kept it very close to the bank so we would have the full force of it.

Q. How far would it throw it, do you know?

A. No, I do not, the distance,—I suppose somewhere in the neighborhood of 200 or 300 feet.

Q. The water did break before it struck the bank?

A. How is that?

Testimony of J. R. Gilfellen.

Q. Did the water break before it struck the bank?

A. What do you mean by break?

Q. Why, loose the solid form?

A. Not always.

Q. How far did it go before it would lose its solid form?

A. Well, I don't know just the distance it went.

Q. You don't know?

A. No, owing to the pressure on it.

Q. Owing to the pressure that it had?

A. Yes, sir, how far it will go from the nozzle before it breaks.

Q. Then sometimes you had greater pressure than others?

A. Yes, sir.

Q. That pressure was governed how?

A. Governed by a gate.

Q. Yes, how do you mean?

A. A gate in the dam, to let out more of the flow.

Q. Up above.

A. Yes, sir.

Q. Then this iron pipe that you spoke of was not full?

A. Not at all times, no.

Q. How far up was it full?

A. Well now, I don't know just how far it would be full at all times,—that is a question.

Q. Then what,—you say you changed the pressure and consequently the force of the water coming out there onto it?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. You did that up at the gate?

A. Yes, sir.

Q. How far up to that?

A. About a quarter of a mile.

Q. How did you do it,—sent someone to do it?

A. Yes, not at all times, we hadn't a full head of water.

Q. What is that?

A. We did not have a full head of water at all times in the dam or the season would have been worked longer.

Q. What do you mean by full head?

A. The water—I mean to say that we would not have a full pressure in the dam at all times.

Q. What was the condition on the pipe,—I suppose it run down slanting, didn't it?

A. Yes, sir.

Q. What was the condition of this pipe when it was half full, pressure, as to its contents?

A. How do you mean conditions?

Q. What was in it and where. Was there anything in it and if so, how much was in it?

A. No, only water.

Q. But how much was there in it?

A. All that would go through the dam, go through the gate.

Q. Well, the pipe was full all the time, wasn't it?

A. No, sir, not up next to the dam it was not so full up.

Q. How low did it use to go down in 50 feet. How much did it sink—sink relative to 50 feet height?

A. How much below 50 feet height would the water sink down?

Testimony of J. R. Gilfellen.

Q. Yes.

A. I guess it used to get sometimes that low down to about 12 feet from the bottom of the dam to where there was no water.

Q. On this John Day works that you spoke of, how much of a hill were they knocking down?

A. 16 feet.

Q. In height?

A. Yes, sir.

Q. And how wide?

A. How much of a claim did it cover?

Q. Yes.

A. The whole claim.

Q. The whole claim?

A. Yes, sir.

Q. How wide did that John Day claim happen to be?

A. 600 feet.

Q. 600 feet?

A. Yes, sir.

Q. Was it a quartz claim?

A. No sir, plaster claim.

Q. A placer claim?

A. Yes, sir.

Q. It was 600 feet wide?

A. 600 feet wide and 1500 feet long.

Q. What claim was that?

A. The John Day Basin.

Q. Now what was the nature of the soil that you were knocking down?

A. Well sir, it was clay and gravel.

Testimony of J. R. Gilfellen.

Q. Clay and gravel?

A. Yes, sir.

Q. What were you doing, trying to reach bedrock?

A. Yes, sir.

Q. And was there a series or one sluice box?

A. How is that?

Q. Well, used a good many sluices, didn't you?

A. Yes, sir.

Q. How were the boxes made up?

A. They are boxes made—

Q. I mean this particular one in the John Day Basin?

A. That is the one I was going to explain to you.

Q. All right, go ahead.

A. They are boxes with a bottom and a box with the sides nailed on like that (indicating with hand), both sides nailed on and one end of it is wider than the other and one drops into the other, and you would have a string of them, have as many or few as you have a mind to, according to the work you are carrying on, and have riffles into these and you cleaned the bedrock and throw the mud and stuff you scrape off the bedrock into the sluice waters so the riffles save the gold.

Q. Does the same waters you knock down the dirt with go through the sluice boxes?

A. No, sir.

Q. That is another proposition?

A. Yes, sir.

Q. Do you shovel it into the sluice boxes, shovel what you scrape off the bedrock into the sluice boxes?

Testimony of J. R. Gilfellen.

A. Generally shovel the gravel and this mud down into the sluice boxes.

Q. Was there any gold in that gravel?

A. Yes, sir.

Q. Well, in hydraulic mining the gold is not all saved is it?

A. How is that?

Q. All the gold,—hydraulic mining is considered to be a somewhat wasteful process of mining?

A. No sir, it is not considered wasteful. You don't expect to find gold any more than what you throw in the sluice boxes and shovel all in,—you don't save that all in there.

Q. Don't save all in there, but still less in hydraulic mining, wouldn't you?

A. I don't see why you should.

Q. Do you know what the estimate is as to the amount or percentage of gold that is lost in hydraulic mining?

A. Supposed always in hydraulicking that one per cent is lost.

Q. About one per cent of gold lost in hydraulicking?

A. Yes, sir.

Q. That is your understanding of that, isn't it?

A. Yes, sir.

Q. That waste—the gold is all secured that is attempted to be secured in hydraulic mining except about one per cent?

A. Yes, sir. Of course, there is hydraulicking where the half of it is lost. It is not properly worked.

Testimony of J. R. Gilfellen.

Q. Well, how do you work properly and how improperly. How do you work when you lose half of it?

A. Have not got their boxes fixed up in shape for hydraulicking or don't carry their gold into them.

Q. How is it you lose so much as half?

A. Well, they have got the riffles in the boxes in such a way that it carries it out over them there and don't use quicksilver.

Q. Ordinary hydraulicking in the usual manner, with reasonable care, you don't lose over one per cent?

A. No, hadn't ought to lose over one per cent.

Q. When you hadn't lose over one per cent, do you in hydraulicking attempt to save the flour gold?

A. Yes, sir.

Q. Do you save it in good hydraulicking?

A. Yes, sir.

Q. It is not carried down over and through the sluice boxes and out into the dump and waste?

A. No sir, if you got copper plates and quicksilver there for it.

Q. What does float gold mean? Do you know?

A. Means light, flat, thin gold that is carried off easily by water.

Q. Carried off easily by water?

A. Yes, sir.

Q. So it is easy to lose in hydraulicking?

A. Yes, sir.

Q. And there is a great deal of it lost, isn't there?

A. Some of it is lost.

Q. It is easier to lose than flour gold, isn't it?

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. Now you went up to the Nespelem country in March, 1908?

A. Yes, sir.

Q. Where did you first go up there?

A. Well, the first when I—

Q. How did you get in there?

A. Went in from Republic.

Q. Went in from Republic?

A. Yes, sir.

Q. Never had been in there before?

A. I had been up along the Columbia river once before.

Q. I mean you had never gone in there to make any stop there and examinations before 1908?

A. No, sir.

Q. You went from Republic I believe you said?

A. Yes, sir.

Q. When did you leave Republic?

A. Well, we left Republic some time along in March. I don't remember just what time.

Q. Do you know about, whether it was about the first or middle or last?

A. Well, somewhere along,—I think it was along about the middle, I am positive it was the middle.

Q. Your impression is it was along about the middle of March?

A. Somewhere so, yes sir.

Q. You were with Peterson?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. What kind of an outfit did you have?

A. What do you mean by outfit?

Q. Well, you were prospecting?

A. Yes, sir.

Q. What kind of a prospector's outfit did you have?

A. We have picks and pans and shovels.

Q. Picks and pans and shovels?

A. Yes, sir.

A. Any horses?

A. Yes, had horses, pack horses and tents and blankets.

Q. And pack horses, had pack horses?

A. We had four of them.

Q. Four pack horses?

A. Yes, sir.

Q. Did you ride?

A. Yes, sir.

Q. Where did you go from Republic?

A. We went to,—from Republic, over to the San Poil.

Q. Was that the first place you camped?

A. Yes, sir.

Q. How long did you camp there?

A. We was there—oh a day or so, but not to exceed three days on the west fork of the San Poil.

Q. You say the west fork of the San Poil?

A. Yes the west fork empties into the main San Poil, —they call it the west fork.

Q. Did you do any prospecting around there?

A. Yes, sir.

Q. Where did you prospect?

Testimony of J. R. Gilfellen.

A. Prospected right there up the west fork.

Q. Along the San Poil or the branch?

A. Along the San Poil and the branch both.

Q. Find any gold?

A. Yes, sir.

Q. Quite a considerable?

A. Yes, sir.

Q. You stayed there and panned both of you continuously during that period, how much did you pan?

A. We found the ground was located and then tested the ground.

Q. Where the men was?

A. We were there, yes, and we panned some to see what it was like.

Q. Then where did you go?

A. We went from there to Park City.

Q. How far?

A. It is about 10 miles.

Q. You camped there?

A. Yes, sir.

Q. Did you stay there long?

A. We were there two or three days.

Q. Do any prospecting around there?

A. We didn't there, didn't do any panning there for it is on top of the mountain.

Q. Why were you up there?

A. We were prospecting on that trip there for quartz and plaster both. Looked good there.

Q. Then when you were at Park City you weren't looking for placers?

Testimony of J. R. Gilfellen.

A. Not at Park City we didn't.

Q. Where is that, at the river?

A. No sir, about half ways from the west fork to the Nespelem crossing the mountain range.

Q. Is that on the river?

A. Park City?

Q. Yes.

A. No sir, right on the summit of the mountain.

Q. Is it near the river?

A. No sir, 10 miles from the nearest point, that is, the nearest point is west fork.

Q. Then where did you go?

A. Went from there to Nespelem.

Q. And down where these claims are?

A. Went to the town of Nespelem.

Q. The Nespelem town?

A. Yes, sir.

Q. And that is on the river?

A. Yes, sir.

Q. Did you prospect there any?

A. At that time?

Q. Yes.

A. No.

Q. How long did you stay there?

A. There one day, only one day.

Q. Where did you make your next stop?

A. Made our next camp at the mouth of the Nespelem.

Q. At the mouth of the Nespelem?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. Did you prospect all the way down?

A. No, sir.

Q. Where did you go after you left that camp at Nespelem? At the mouth of the Nespelem?

A. Where did we go from there?

Q. Yes.

A. Went across the range to Keller.

Q. How far is that then?

A. 22 or 23 miles, something like that.

Q. Well, did you prospect on the way?

A. We prospected a little for quartz on the way there.

Q. What river is Keller on?

A. San Poil.

Q. Did you find gold there?

A. We didn't prospect there for plaster.

Q. How long did you stay there?

A. We stayed there at Keller for a day or two.

Q. How long did you say you were there at the mouth of the Nespelem?

A. We were there two or three days that time. The reservation was not open and they would not allow us to stay long in a place.

Q. The reservation was not open you say?

A. No, not in March, no,—was not open until July.

Q. You say you were there two or three days?

A. Yes, sir.

Q. Where was this, Keller?

A. No, the mouth of the Nespelem, on the Pequoir ranch.

Testimony of J. R. Gilfellen.

Q. You told Mr. Blair on direct examination that you had been up and down the Columbia River?

A. Yes, sir.

Q. When was that, some other time?

A. Yes sir, that was when we went there to Nespelem,—made a thorough investigation of it in the fall of 1898.

Q. Then you had been and prospected the Columbia during the period that I have been going over just now?

A. Yes, sir.

Q. You didn't mention anything about that. How is that you haven't since we have been talking, starting from Republic and going down to Keller?

A. Yes, sir.

Q. Was it during that period that you prospected the Columbia?

A. No sir. It was after the Reservation was thrown open we went and prospected the Columbia and prospected the Nespelem bar.

Q. You didn't tell us you prospected the Columbia that trip we have been talking about. I might think the Nespelem was the only place.

A. The only place we touched the Columbia.

Q. When did you come back to the Nespelem bar?

A. Went back the latter part of September or the first of August.

Q. What year?

A. 1898 after it was thrown open.

Q. How long were you there at that time?

A. Somewheres over a week to ten days.

Testimony of J. R. Gilfellen.

Q. Is that the time you prospected the river?

A. Yes, sir.

Q. How far up did you prospect it?

A. From the mouth of the San Poil down.

Q. From the mouth of the San Poil down?

A. Yes, sir.

Q. How far is the San Poil from there?

A. I could not say—I would judge somewhere about 25 miles.

Q. Was that while you were camping on the claims?

A. How is that?

Q. Was that while you were camping on the claims?

A. We went down the San Poil to the mouth and camped along in different places until we got to the mouth of the Nespelem.

Q. Did you make any locations on the San Poil or the Columbia or the Nespelem or any of them?

A. Yes, we got a location on the Columbia and one on the San Poil.

Q. Whereabouts on the Columbia?

A. Along down below the Nespelem.

Q. Down below the Nespelem?

A. Yes, sir.

Q. You said—I believe Mr. Blair asked you why you didn't locate this ground down on the Wickman there?

A. What?

Q. On the Wickman and Peabody?—he asked you why you didn't locate it.

A. He asked it?

Q. What was your reason?

Testimony of J. R. Gilfellen.

A. The reason is I didn't have money to go ahead and put in a dam and get a pipe for to go to hydraulicking.

Q. There was no other way to get it and make it pay except that, was there?

A. Well, I didn't see any other way, but I think it would be a feasible proposition like that.

Q. A feasible proposition?

A. Yes sir, one that worked steadily.

Q. Well, that is not a very expensive proposition is it?

A. How is that?

Q. That is not really very expensive under conditions up there—the water is there for hydraulicking, isn't it?

A. Yes, sir.

Q. It would not cost very much to dam it up, would it?

A. Not a great deal.

Q. Would you know how much?

A. Well no, I never took the items what it would cost, never made measurement for in fact I didn't have the money to put in anything like that. It was not necessary to go ahead, I didn't think.

Q. But hydraulicking is one method of mining?

A. Yes sir, that is one of the methods, but what is called sluicing is where you have boxes and shovel it in, and shovel into the boxes and don't use any hydraulic for cutting it down.

Q. All it would cost to put in a sluicing outfit there would be a pipe running from the dam which impounded the water up at the east end, wouldn't it,—all that was

Testimony of J. R. Gilfellen.

required for sulicing would be a pipe running from the water that was dammed up at the east end down on to the earth?

A. That is not all that is required. It requires lumber and dam, requires lumber and requires a dam and requires hose and requires a giant.

Q. What is a giant?

A. What you call the nozzle.

Q. Do you know what those things cost?

A. I had a price list of them, all of them.

Q. And how many pannings did you make on the claims?

A. On the Peabody and Wickman?

Q. Yes, sir.

A. How many pans did I pan?

Q. Yes, sir.

A. Gosh I cannot answer that for I was there, I was there and done some panning. I didn't keep any memorandum of the pans, how many there was.

Q. Don't remember now where they were except generally?

A. I remember in general across the claims where I prospected a little.

Q. They were not claims then were they?

A. No sir. No person had ever named them.

Q. No claims on them then at that time?

A. No, sir.

Q. And you could have taken them up if you had been a mind to?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. Still that was right there was known as good diggings, wasn't it?

A. It was always supposed to be.

Q. It was always supposed to be?

A. By men that had been through there with the Chinamen and worked those other bars.

Q. These other bars weren't right there by the Nespelem bar?

A. No, one above and the other a little below.

Q. Where is the Nespelem bar?

A. This is the Nespelem bar right down through here (indicating).

Q. This is the Nespelem bar (indicating)?

A. Yes sir, what is called the Nespelem bar was in right throughout in this direction (indicating).

Q. Did you work up around the Discovery hole here on the Wickman?

A. I don't know where the Discovery hole is.

Q. You don't know then?

A. No, never paid any attention to Discovery hole.

Q. Didn't pay any attention to that this year when you were up there a few weeks ago?

A. No, sir.

Q. Where do you reside now?

A. In Nespelem.

Q. In Nespelem?

A. Yes, sir.

Q. You didn't mention being there twice when you talked with Mr. Blair, did you?

A. I don't know whether I did or not.

Testimony of J. R. Gilfellen.

Q. It is a fact that you were there twice in 1898?

A. Yes, sir.

Q. How did you get in the second time, in September?

A. Went down from the San Poil and down the Columbia River.

Q. You went from San Poil down the San Poil river?

A. Yes, sir.

Q. How did you go down, on horses?

A. Yes, sir.

Q. You and Peterson?

A. Yes, sir.

Q. The same outfit that you had before?

A. Yes, sir.

Q. Where did you camp before you went down to the bar, the Nespelem bar?

A. How is that?

Q. Where did you camp before you went to the Nespelem bar?

A. The night before we went there?

Q. Where were you the last camp before you went there?

A. That was up at the upper end of the bar, it was along first at Pequoir's ranch.

Q. Was that on a part of the bar?

A. Yes, on the upper end of it.

Q. Upper end?

A. Of the bar.

Q. That is a ranch,—a fruit ranch, an orchard on it?

A. There is a little orchard there.

Testimony of J. R. Gilfellen.

Q. Yes.

A. Yes, sir.

Q. Stock grazing on the ground?

A. Well they have seeded the ground there.

Q. How far from these claims is it?

A. Oh somewhere in the neighborhood of half or three-quarters of a mile.

Q. Half or three-quarters of a mile?

A. Yes sir, that is, to his house.

Q. When you went there, you camped in his house, did you?

A. Yes camped there one night.

Q. You camped there one night and then went on down on these claims?

A. Yes, sir.

Q. Where did you make your next camp after you left these claims?

A. After we left the mouth of the Nespelem?

Q. Yes.

A. About four miles down the river?

Q. About four miles down the river?

A. Yes, sir.

Q. The Columbia?

A. Yes, sir.

Q. And where was your next camp?

A. Our next camp was down about 6 or 7 miles along there.

Q. Well, had you prospected the Columbia before you came to Nsepelem bar from the San Poil?

A. How is that?

Testimony of J. R. Gilfellen.

Q. Had you prospected on the Columbia—did you prospect on the Columbia while you was at the Nespelem bar?

A. We prospected around close to the mouth. We didn't have to travel, so we commenced prospecting at the mouth of the San Poil and prospected down.

Q. While you were camping at the Nespelem bar, did you then prospect the Columbia too?

A. We prospected down to and along the face of these claims, more than the length of the claims.

Q. At every place you prospected along there you found gold on the Columbia?

A. Not every place. Every place we got into the gravel we found gold. We prospected some places we didn't get down into the gravel.

Q. There is gold all along the Columbia River?

A. Where it has been panned there, yes sir.

Q. Most any place you can find colors?

A. Any place that we got into gravel we found gold.

Q. What do you mean by gold, you mean colors, I suppose, don't you?

A. Well yes particles.

Q. Particles, fine particles of gold?

A. Fine and coarse both.

Q. What does coarse mean?

A. Coarse gold is pieces big enough so that you don't need a glass to see them and you pick up some coarse gold and let it drop and it will rattle in the pan. Some gold is as large on the Columbia,—is as large as

Testimony of J. R. Gilfellen.

No. 4 shot. That is what I call coarse gold on the Columbia River.

Q. What you mean to call fine gold is if it is wet and has a black background it is discernible by the naked eye, isn't it?

A. If it is gold that can be seen by the naked eye,—flour gold.

Q. Yes.

A. Yes sir. I never used a microscope once in prospecting.

Q. Well it is not necessary, to see fine gold, and gold of that character, don't mean paying gold necessarily, does it?

A. If there is quantity enough of it it does.

Q. Anyhow the mere fact that you found it don't mean that there is enough of it, if you only find one piece of flour gold?

A. If you only find one piece of flour gold, that is not enough, but it depends on what you mean by enough,—if you find anywheres there is a hydraulicking proposition, if you find five or six cents a yard it is enough.

Q. Five or six cents a yard?

A. Yes, sir.

Q. You say you can afford to hydraulic?

A. Yes, sir.

Q. Under what conditions—are not conditions different in one place than in another. Conditions are somewhat different in different places, aren't they?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. Why do you put it at that much money as an estimate?

A. Arrive at that.

Q. As an estimate of 6 cents—where do you put 6 cents as an estimate of paying value of dirt for hydraulicking?

A. Because I have hydraulicked where the estimate was only 6 cents and made good money at it.

Q. 6 cents a cubic yard?

A. Yes, sir.

Q. It might at that particular place,—it might have been poor money at another place, might it?

A. Well no. It was not poor, 6 cents,—as hard a place to hydraulic as you could get hold of. Clay is a hard hydraulic proposition.

Q. Anywhere where there is clay is pretty hard work to separate the gold from it?

A. It is not if the separation,—if you cut up the bank.

Q. Don't clay have a tendency to carry gold with it?

A. Yes, sir.

Q. That is one habit of it, isn't it?

A. Yes sir, but you can save it if you have gold rifles and quicksilver.

Q. Did you notice the clay on the Nespelem bar?

A. There is a clay bedrock, what is called false bedrock; with gravel on top of it, is what carries the gold, but it is not necessary to sluice off all to get it.

Q. Then did you go into,—when you went up there three weeks ago, did you go into the holes or the discovery shafts or anything?

Testimony of J. R. Gilfellen.

A. No, sir.

Q. Didn't see any?

A. Yes I saw some there.

Q. Didn't go into any?

A. No. They had been caved in and filled in with dirt and it would be a whole lot of work to get down into the gravel and find anything at that time we were there.

Q. How deep are those holes?

A. I didn't see.

Q. Didn't pay any attention to them?

A. No.

At this point, 12 A. M. July 15, 1909, the hearing was adjourned until 2 o'clock P. M. same date.

Spokane, Wash., July 15, 1909,

2:00 o'clock P. M.

Hearing continued pursuant to adjournment. All parties present.

J. R. GILFELLEN, recalled for further examination, already sworn.

CROSS EXAMINATION.

By Mr. AVERY:

Q. You found gold all along the benches where there were benches on these claims, didn't you?

A. Under the gravel.

Q. Under the gravel?

A. Yes, sir.

Q. A thin streak of gravel, isn't it?

A. No sir, it is not a thin streak.

Q. How thick is it?

Testimony of J. R. Gilfellen.

A. Oh I should say as high as 60 feet.

Q. As high as 60 feet?

A. Yes, sir.

Q. Higher than 60 feet?

A. Where that bench is about 60 feet.

Q. Where?

A. On the Peabody, on the south side.

Q. On the South side of the Peabody, North of the River?

A. On the South side of the Nespelem on the Peabody claim.

Q. Whereabouts on this map was the gravel 60 feet high?

A. Down in here (indicating) from the Columbia River up.

Q. For how far?

A. Well, for close to half a mile.

Q. Is there anything but gravel there?

A. Some sand on the surface.

Q. Did you say there was gold in the gravel?

A. Yes, sir.

Q. And you would get it by hydraulicking?

A. You would dig a hydraulic chute to cut the gravel.

Q. You would have to tear the gravel out 60 feet high of gravel, wouldn't you?

A. Yes, sir.

! Q. That would not include about 45 feet of dirt on the South bank of the Nespelem, something in the neighborhood of that?

A. Some places it is much more than others.

Testimony of J. R. Gilfellen.

Q. If you tear the gravel out where would it go—how would you tear the gravel out of the dirt?

A. Hydraulic it by the strength of the water.

Q. Where would the gravel go?

A. Go down into the Columbia river through the chutes.

Q. You would drive it for half a mile down into the Columbia, would you?

A. Yes, sir.

Q. By sluicing it down there?

A. By hydraulicking it down, pushing it down there.

Q. But you cannot drive gravel that distance, can you?

A. Yes sir, drive it any distance if you have got water power enough.

Q. If it was thrown on it?

A. Yes, sir.

Q. Now you were pretty well satisfied the first time you went up there in 1898 in July, I believe you said,—you said you were pretty well satisfied that that was a good claim?

A. Yes, a good claim for hydraulicking.

Q. Hydraulicking it?

A. Yes, sir.

Q. It was not a paying proposition to pan, was it?

A. No, sir.

Q. And you were not looking for a hydraulicking proposition, were you?

A. No sir, looking for sluice boxes.

Q. Sluice boxes?

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. That is by shoveling it into the sluice boxes and turning the water on and by putting the water on to flow through the sluice boxes?

A. We shoveled it into the boxes while the water is going through.

Q. Why couldn't you do it up there—why couldn't you work the sluice boxes up there? There is fair water and fair everything else?

A. Because it takes too many men.

Q. A sluice box proposition is perfectly feasible up there so far as the physical features are concerned,—that is you have the water and force and place for the boxes and dirt anll that sort of thing, but I understand you to say you could not make money out of sluice boxes?

A. No, sir.

Q. That is right?

A. That is right.

Q. Make more money out of sluice boxes though than you could out of panning, couldn't you?

A. Yes,—by rocking or using a long tom, same condition, sluice boxing, rocking, panning, and using a long tom.

Q. You could not mine up there profitably by a long tom or rocker or panning or sluice boxes, could you?

A. No, not to make any profit out of it.

Q. Now you said that you thought it was a place a man would be—a reasonable man would spend his labor and time in developing it for the purpose of securing gold, didn't you?

Testimony of J. R. Gilfellen.

A. For the purpose of hydraulicking.

Q. Well you had the time, didn't you?

A. How is that?

Q. You had the time?

A. Yes we had the time.

Q. You had the labor?

A. Partly.

Q. What do you mean by that?

A. It is a slow operation for two men to go ahead and we didn't have the money to hire more.

Q. Did you make a very careful thorough examination when you went up there in July, 1898?

A. We made a thorough reliable examination and we were satisfied ourselves.

Q. You were entirely satisfied of the character of the land?

A. Yes, sir.

Q. Then what did you examine it for in the latter part of the year again?

A. What year?

Q. Same year.

A. After July?

Q. Yes.

A. I didn't examine it after that.

Q. Didn't you examine it again that year?

A. No sir, not that year I didn't, not after July.

Q. When did you examine it again?

A. I never saw it to pan again until about three weeks ago.

Q. Didn't you say in your direct examination and in

Testimony of J. R. Gilfellen.

part of the cross examination that you were up there after that?

A. No sir. I was there in March before but not after.

Q. Then it was March that you were up there the first time, was it,—then it was March instead of July that you were up there the first time?

A. Yes, March was the first time and July was when we made the thorough examination.

Q. Did you make much of an examination in March?

A. No.

Q. You panned you said around on it three days?

A. Panned a little on it, not to amount to anything.

Q. Where did you pan?

A. Panned along the Nespelem and along the Columbia both.

Q. There is no land along the Columbia on this claim, is there, the Columbia don't touch this claim, does it?

A. The claim is right to the mouth of the river, but the claim was not located then.

Q. Where did you pan in March?

A. We panned along the Nespelem and along the Columbia both.

Q. And found these colors and dust?

A. We found gold there.

Q. When you say gold you mean specks of gold discernible to the eye?

A. Fine gold and coarse gold both.

Q. What is coarse gold again?

A. Coarse gold is gold you can see with the eye and

Testimony of J. R. Gilfellen.

some of it is so you can pick it up even and drop it in the pan and it will rattle, as big as No. 4 shot.

Q. You spent three days looking it over?

A. Well we were there in the neighborhood three days in March, I don't remember just where.

Q. At that time you decided that it was a claim that would or would not be profitable to work the way you wanted to work it?

A. In March?

Q. Yes.

A. We didn't come to any decision on that or we would not have went back in July.

Q. When you left there in March you expected to go back then, did you?

A. Yes, sir.

Q. When you did come back that was after the reservation opened, wasn't it?

A. Yes, sir.

Q. In July you decided—went back there to see if it was not good enough for your purpose?

A. Well we satisfied ourselves we could not make what we wanted to make.

Q. When you went back there you thought you could, didn't you?

A. We didn't think nothing about it. We wanted to test it; that was why we was there.

Q. Had already spent three days on it?

A. Yes, sir.

Q. But when you went back it was your impression

Testimony of J. R. Gilfellen.

that probably or possibly that might be ground which you could work?

A. We thought we would find a place where we could work it, yes sir.

Q. And went back and found you could not do it?

A. Not with sluice boxes, no.

Q. Or any other way but hydraulicking?

A. Yes, sir.

Q. Do you know anything about the expense of hydraulicking?

A. Yes, sir.

Q. What is it?

A. It is, that work of hydraulicking, is in some places much more expensive than others.

Q. What is that?

A. In some places it is much more expensive than others.

Q. That was a rather cheap place to hydraulic, wasn't it?

A. Yes, sir.

Q. Relatively about as cheap a place as anyone could hydraulic, wasn't it?

A. Yes, sir.

Q. How much pipe would it require?

A. In the neighborhood somewheres close to 3,000 feet.

Q. 3,000?

A. Yes to hydraulic right down stream there and much more when you got to the Wickman, at the end of the Wickman claim, it would be a long distance clean

Testimony of J. R. Gilfellen.

to the end of the Wickman claim, the water would have to go right over the claim.

Q. The question of the dam would not be a very serious one because of the formation there,—you could turn the water into the pipe very easy, couldn't you?

A. Well, wouldn't cost a great deal, no.

Q. Where you refer to this, what has been called and which I will refer to and call the excluded strip, that is this strip here (indicating) southwesterly from the line drawn from corner 3 to corner 4 of the Wickman which am calling the excluded strip, between that claim and the Columbia River?

A. Yes, sir.

Q. That showed about as good as anywhere else, didn't it?

A. Yes, sir.

Q. And you found that it would be as easily mined as any other place, couldn't it?

A. Yes, sir.

Q. Couldn't it be more easily mined than any other place on the claim really?

A. On the Wickman claim?

Q. Yes.

A. No I don't know as it would be any easier, when that it washed off the Wickman claim—you would wash this first as easy as that.

Q. I know, but it would be easier to extract the gold right on this excluded strip by reason of the proximity to the river and dump than any other place, wouldn't it?

A. Easier you say?

Testimony of J. R. Gilfellen.

Q. Easier to get the gold from here than up on the Wickman, wouldn't it?

A. To get it into the hydraulic?

Q. Well to finally get it?

A. No it would not.

Q. It would not?

A. No. In digging up over here, when you get the water, coming in behind and cut it.

Q. Then it would be equally as easy?

A. Yes, sir.

Q. Just about the same?

A. I don't see any difference.

Q. What about this gully you say runs across the northwesterly line of the Wickman and runs parallel with it?

A. About parallel, nearly parallel with it.

Q. That has got the same amount of gold in it, has it?

A. That is where I found gold in two different places in the gully that I panned.

A. That is, fine gold and coarse gold?

A. Yes, sir.

Q. You could not save any of it,—you didn't try to save any of it?

A. No we didn't try to save anything. I had a few ounces of coarse gold that I got there and kept, but I didn't try to save any of the fine gold.

Q. Did you tell me how deep that was?

A. How is that?

Q. How deep did you say the gully was?

Testimony of J. R. Gilfellen.

A. In the place where I was about 8 feet of gravel, but down near in a place near the river 20 or 25 feet.

Q. All of these gullies along the Columbia have gold, that is, you can find gold in them, colors, more or less all of them, discernible?

A. Yes, sir.

Q. Isn't that true all along the Columbia River?

A. I believe so.

Q. Not propositions that could be worked profitably though?

A. How is that?

Q. They could not be worked profitably though?

A. Not all of them, quite a number of them can.

Q. You hadn't seen conditions change at all when you were up there in July?

A. No, sir.

Q. When you went back there to look at the claim in July wherein didn't it fulfill your expectations—you thought that there was more gold there naturally than there was?

A. From the report that I had got of it I supposed that there was sluice box diggings there.

Q. And there was not?

A. No sir, not satisfactory for me.

Q. Your idea is for sluice box purposes 6 cents a cubic yard is sufficient?

A. How is that?

Q. Did I understand you to say for sluice box purposes that you thought 6 cents in a cubic yard was sufficient?

Testimony of J. R. Gilfellen.

A. For shoveling it into the sluice boxes?

Q. Yes, sir.

A. No sir, sufficient for hydraulicking, but not for sluice boxes.

Q. Was there a cabin when you first went there?

A. No sir. Well there was a cabin the first time I went there but it was an Indian cabin on the other side of the Nespelem creek from where the Hudnutt cabin is,—a little Indian dug-out we called it.

Q. About opposite the Hudnutt cabin?

A. A little up the creek from the Hudnutt cabin.

Q. How far from the Nespelem creek?

A. Oh something about 75 feet I should judge,—something like that.

Q. What do you call placer ground—how do you define it?

A. Where there is gold distributed through the gravel on top of the bedrock.

Q. What is that?

A. Where there is gold distributed through the gravel on bedrock.

Q. Did you ever estimate how much ground would have to be removed in order to get the bedrock on these claims?

A. Well, I never went to bedrock.

Q. What is that?

A. I never got to bedrock.

Q. You never did get down to bedrock?

A. Not to solid ground, bedrock.

Q. Do you know where this bedrock is?

Testimony of J. R. Gilfellen.

A. I suppose it is down under there somewhere?

Q. You don't know how far down?

A. No, sir.

Q. You don't call that clay bedrock?

A. It is bedrock of that gravel that is there.

Q. I say when you talk about it you don't consider it bedrock?

A. I consider it bedrock of the gravel where it carries gold,—not bedrock, regular bedrock.

Q. You don't know if there is any gold under the clay?

A. I don't know, I didn't go through it, I didn't try to.

Q. I asked you if you thought there was?

A. I didn't have any opinion about it, I didn't have any opinion at all about it, you could go into the rock and there may be more gravel below it.

Q. How many holes did you sink on that place?

A. How many holes did I sink on that place in 1898?

Q. Yes, sir.

A. I don't know, I didn't keep no count; we dug three or four.

Q. Down to clay?

A. Yes sir, some of them to clay, not all of them.

Q. Well you remember why you didn't dig down to clay?

A. When we dug one and prospected down to clay. Others that we dug and found just about the same where we got into the gravel first we didn't believe it necessary to go to clay.

Testimony of J. R. Gilfellen.

Q. Where did you dig those holes, how close,—could you show where you dug any holes?

A. Yes, sir.

Q. All right.

A. We dug holes along up in here down on to the clay (indicating).

Q. You have got your finger along the word “Peabody”, did you dig one or more holes?

A. We dug several holes along in through here (indicating).

Q. That is between the word “Peabody” and “Sur. 680”?

A. Yes along about that course, back from the river a piece.

Q. How many holes did you say you dug there?

A. We dug a number, I don’t know how many.

Q. Two or three?

A. More than that.

Q. How big holes were they?

A. They were little, just so we could get the gravel out.

Q. A foot or two feet or six feet or what?

A. Something about two feet.

Q. Where did you dig any other holes?

A. Dug some holes out in there (indicating).

Q. Under the word “Wickmam”?

A. I dug the first one out in here (indicating) in this gully that runs down in there (indicating)—dug in there and got into gravel.

Q. How deep did you go down there?

Testimony of J. R. Gilfellen.

A. From 18 inches to as high as three feet.

Q. And struck clay?

A. No sir, we didn't strike clay.

Q. Didn't you get clay in the Wickman at all?

A. Yes, went to clay at one place out in here (indicating).

Q. Under the word "Wickman"?

A. No, out along in here some place and here is clay back off in here (indicating) and we panned it along back around in here (indicating).

Q. Then you believe you struck clay in the Wickman, say about the spot between the word "Wickman" and the other opposite boundary of the Wickman?

A. Well along in there somewhere we had clay and if I remember positively I think we had clay back in here somewhere (indicating).

Q. "Here" don't mean anything to the reporter. Do you mean over here by corner No. 5?

A. Yes, sir.

Q. And could you see the clay exposed along to the east of the excluded tract?

A. Yes, sir.

Q. From your inspection there how far from the surface was the clay?

A. Well, varied in places. We sunk there one hole, we expected to find, to get through to clay, and we went down about 6 or 7 feet and didn't find any clay; another place we sunk a hole 10 feet and didn't get to clay. The ones that we sunk was in these gullies or

Testimony of J. R. Giffellen.

washouts where we didn't have to dig through so much sand.

Q. On the line from corner 3 to 4 the clay was down at about how far below the surface on the edge of that?

A. How is that?

Q. The clay was exposed on the face of these?

A. Yes.

Q. How far from the surface was this strata of clay or stratum, that is exposed, from the River?

A. On the westerly side of the Wickman—on the the Columbia River at the water edge?

Q. Yes.

A. How far was the clay?

Q. From the surface?

A. Well it varies in places. Some places there is, runs, the gravel runs from three feet to safe in saying ten.

Q. Three to ten feet?

A. Of gravel and then this sand on top of that.

Q. How high was it from the highest surface?

A. How high?

Q. How high was the highest surface from this clay as you found it in that space of the claim there?

A. Well I should judge 25 feet.

Q. Now is this part of the claim lower than this part (indicating)?

A. How is that?

Q. Is the westerly part of the claim, or bench of the Wickman claim,—you see along here (indicating).

A. I understand.

Testimony of J. R. Gilfellen.

Q. Is it a bench?

A. Well there is a place that is a bench.

Q. And then a higher bench at this part (indicating)?

A. No higher practically, some places higher than this because there is a slough in here on the Wickman, a slough or a low place in there (indicating).

Q. In order to get a bedrock did you tell me that you knew about how much of the surface gravel and loam and sand would have to be removed. Did you ever make any estimate of this?

A. No, sir.

Q. No.

A. No. I did that. I did it on the portion up on the bench here on the south side.

Q. How much did you figure?

A. To be removed before you would get in clay?

Q. Yes.

A. I calculated there was about 18 inches to be removed off the top on the high bank of gravel.

Q. And then clay that you could hydraulic profitably?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. That is if the gold was there?

A. How is that?

Q. That is if the gold was there that you expected would be there?

A. If it showed up there the same as what we panned?

Q. You mean that you would, to get this gold you

Testimony of J. R. Gilfellen.

would have to take off all the clay too in order to get the gold by hydraulicking?

A. You would have, hydraulic it all off down to clay.

Q. Down to clay?

A. Yes, sir.

Q. Did you ever figure on the number of cubic yards that would have to be removed to do it?

A. On the whole piece?

Q. Yes.

A. No sir. I didn't. It was not necessary.

Q. Why not?

A. Because we can figure in a cubic yard how much gold there was and calculate from that. We didn't make any estimate as to the entire cubic yards there was in there,—where if we had been fixed so we could have hydraulicked, but we did not.

Q. You would not have hydraulicked until you figured that though, would you?

A. No, sir.

Q. Is that true in the middle part too?

A. Yes, sir.

Q. On the west?

A. Yes, sir.

Q. Now calling your attention to that part of the Peabody that runs over the east line for half a mile down to the river,—have you ever been up to those falls?

A. Don't know them, I never went right down the creek, but I have been to the falls, but when we tried this back from the creek a little piece around the falls.

Q. Never prospected down the falls, did you?

Testimony of J. R. Gilfellen.

A. No sir, we didn't.

Q. Never prospected east of corner 7?

A. Not to amount to—right about corner 7 is where we quit prospecting.

Q. Where is the Condon Field?

A. The Condon field lay right along here (indicating). The time that this was located it was called Pequoir's place and Condon got it from Pequoir later on.

Q. It was first called Condon's field.

A. How is that?

Q. Was it first called Condon's?

A. First called Pequoir's.

Q. Is it level, high land there?

A. Yes, level land.

Q. Sage brush land?

A. I suppose it was once. It was fenced up before I went there, in a farm.

Q. Is that where the orchard is?

A. There is a few scrub trees around the house.

Q. But it is an orchard?

A. How is that?

Q. It is an orchard, isn't it?

A. I suppose they call it orchard.

Q. What would you call it,—an orchard—you wouldn't call it an orchard?

A. I don't know as I would for last summer he went and tore up a lot of the trees there, and said they didn't bear now, a few of them did.

Q. Do you know that it was affected by any blight, any insect?

Testimony of J. R. Gilfellen.

A. I don't know that.

Q. You mentioned Stevenson's place, where was that?

A. How is that?

Q. Where is Stevenson's place?

A. Up the Columbia River about 6 miles.

Q. He has a ranch?

A. Yes, sir.

Q. Any gold there?

A. There is on the bar.

Q. Where, on the Stevenson place?

A. Yes, sir.

Q. He farms that does he?

A. Yes, sir.

Q. Got an orchard there has he?

A. Yes, sir.

Q. How big an orchard?

A. I could not tell you. I never went over it, I go along in the stage and see the orchard.

Q. How many acres has he?

A. I think he told me he had 1200 acres. I think that is what it was, something like that.

Q. 1200 acres to orchard?

A. No, 1200 acres.

Q. In the whole ranch—you don't know how much orchard there was?

A. No.

Q. Is that sage brush land or cultivated land, is it cultivated?

A. How is that?

Testimony of J. R. Gilfellen.

Q. Is it sage brush land?

A. I suppose it was. I don't know. I am not a farmer and I don't know anything about farming.

Q. What is your business?

A. Miner.

Q. Where are you working now?

A. Been working for Mr. Hudnutt.

Q. On these claims?

A. No sir. I never worked on the claims.

Q. When you say working for Mr. Hudnutt, you mean you were working for the Multnomah Mining, Milling & Development Company?

A. Yes sir, quartz mining.

Q. What kind of soil is particularly adapted to hydraulicking?

A. Sand and gravel.

Q. Well, do they ever hydraulic any other kind of soil?

A. Yes, sir.

Q. Is loam adapted to hydraulicking?

A. You can wash the loam off by hydraulicking all right.

Q. But this loam that is on top of the Wickman and Peabody, that isn't adapted to hydraulicking?

A. It is adapted to washing very easy with water and sand.

Q. Then do you mean that loam is adapted to hydraulicking?

A. Any of that is loam, then sand, or whatever you call it, is very easy washed off.

Testimony of J. R. Gilfellen.

Q. Do you know what pressure you could get there with water down on the level ground of the Peabody?

A. How is that?

Q. Do you know what pressure could be got from the water coming down?

A. They gave me an estimate of a fall of 140 or 150 feet.

Q. Did you figure how much pressure there would be?

A. No I didn't figure.

Q. Can you estimate that or figure it?

A. Yes, sir.

Q. You never have?

A. No, sir.

Q. Would the pressure depend on the size of the pipe, the larger the diameter of the pipe is the more pressure you would have on it.

Q. That is a pipe that was 10 inches in diameter there would be more pressure on the gravel and sand than a two inch pipe would. That is take a 10 inch pipe coming down from the dam to the level and put on a 5 inch hose at the end and a giant or nozzle of two inches would give a greater pressure on that 2 inch hole than as though that main pipe coming down was only 5 inches in size, the size of the hose—that is right, isn't it?

A. Yes, sir.

Q. Give a greater pressure?

A. Yes, sir.

Q. Would throw a harder stream?

A. Yes sir,—cut more gravel.

Q. Yes sir.

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. Do you know the pressure per square inch of a pipe full of water that drops practically a hundred or a hundred and fifty feet?

A. I can figure it out.

Q. That would depend of course upon the size of the pipe?

A. Yes, sir.

Q. The pressure would be greater if the pipe was larger than if it was smaller, is that right?

A. The further the flow the more pressure there is, the more pressure there is through the pipe.

Q. But also it makes a difference, does it, the size of the pipe?

A. Yes, sir.

Q. The opinion you had received about this mouth of the Nespelem being good was rather over estimated?

Mr. BLAIR: I object to that as absolutely immaterial. Ask the question in such a way that the answer can be specific and of some value.

Mr. AVERY: This is cross examination.

Q. Do you understand the question?

A. The way you put the uestion here,—we were depending on when we went there to look?

Q. You didn't find as good diggings down there as you had been told there was?

A. No we didn't. We were told there was good sluice box diggings, which I didn't find.

Q. Who were with you when you panned three weeks ago?

Testimony of J. R. Gilfellen.

A. Mr. Hudnut and Mr. Laleede, Mr. Bordeaux and Mr. Imes and Mr. Gay.

Q. Is Mr. Bordeaux here?

A. No, sir.

Q. What is his business?

A. Mining prospector.

Q. Where does he live?

A. Nespelem.

Q. In Nespelem?

A. Yes, sir.

Q. Does he work on this claim at any time?

A. How is that?

Q. Have you ever seen him work on these claims?

A. No sir. I never seen him on the claim when we went down there.

Q. Who does he work for?

A. He done work for Dr. Hudnutt part of the time,—for the Multnomah Mining Co.

Q. Does he work for the Multnomah,—we will call it the Multnomah Company?

A. Yes, sir.

Q. How long has he been working for them?

A. Well I could not tell you how long.

Q. Ever since you can remember?

A. Well no, not ever since I can remember.

Q. For the last few years?

A. Well he was working there a while this spring and then he was off a while and came back and worked a while again.

Testimony of J. R. Gilfellen.

Mr. BLAIR: I object to this as not cross examination of this witness.

Mr. AVERY: That is all.

REDIRECT EXAMINATION.

By Mr. BLAIR:

Q. How long a season did you have on the John Day basin?

A. How is that?

Q. How long a season did you have on the John Day basin placer mining?

A. Oh a season, about three months a season.

Q. What did you say?

Mr. AVERY: I object to that as immaterial as to what they did there.

A. Three months a season.

Q. What limited the season to three months?

Mr. AVERY: I object as immaterial.

A. The amount of water.

Q. How would that matter be in the water of the Nespelem River?

A. I think there would be plenty of water for all time.

Q. All year around

A. Yes, sir.

Q. Do you know what percentage of flour gold is lost in hydraulicking?

A. Well I was calculating there would be about one per cent.

Q. Is more float gold lost than flour gold?

A. Yes, sir.

Testimony of J. R. Gilfellen.

Q. You said when you went there in March, 1898, the reservation was not open?

A. How is that?

Q. You said that when you went there in March of 1898 the reservation hadn't been opened?

A. No, sir.

Q. When was it opened?

A. Opened in July.

Q. How did that affect the mining within the reservation?

Mr. AVERY: I object to that as being utterly immaterial.

A. How is that?

Q. How did that affect mining within the reservation?

A. Before it was opened the Indian police were around after us to try to keep us off the reservation.

Q. On Pequior's ranch, do you know the crop that had been grown on that?

A. Well, only one season, if I seen.

Q. Any success in growing crops on the land?

Mr. AVERY: I object to that and move to strike it out on the ground that he says he don't know anything about farming, therefore he is not qualified to speak and it is incompetent anyway.

Q. You say there was a few scrub trees near the house on the ranch?

A. How is that?

Q. You testified on cross examination that there were a few scrub trees?

Testimony of J. R. Gilfellen.

A. Yes, sir.

Q. Do you know the number?

A. No I do not.

Q. Do you know what kind there are?

A. Some apple and peach and I think apricots and there may be others, but I know of them.

Q. Do you know how far off they are from market?

A. I don't know.

Q. You testified that you hydraulicked with profit on the John Day basin at 5 cents or 6 cents a cubic yard?

Mr. AVERY: I object to that as an expression of something that he did not say.

A. I did answer that question once,—6 cents.

Q. Are the conditions different as between the John Day basin and the Nespelem placer?

Mr. AVERY: I object to that as having been gone over once.

A. How is that?

Q. Are the conditions different?

A. Yes, sir.

Q. In favor of which placer are the conditions?

Mr. AVERY: I object to that as being so indefinite that it is not susceptible of being analyzed and it is incompetent also.

A. The Nespelem.

Q. In what way are the conditions different?

A. They are much easier washed and could wash a greater amount in the same length of time.

Q. What is it with reference to the quantity of water?

A. There is more water, the water can be used stead-

Testimony of J. R. Gilfellen.

ily here the whole year around while there we only used it about three months in a year.

Q. What about the head of water?

A. Bigger head of water.

Q. Mr. Gilfellen I ask you to refer to the Wickman placer and the plat, complainant's exhibit No. 4 and I call your attention to the following, "Plat of the claim of the Multnomah Mining, Milling & Development Company known as the Peabody placer and the Wickman placer, * * * containing an area of 151.173, and 99.540 acres respectively. Do you know how many men located the Wickman placer originally?

Mr. AVERY: I object to that as not the best evidence.

A. Of this Company?

Q. Yes of this Company located the Wickman placer?

Mr. AVERY: I object to that as not the best evidence.

A. I believe there was five. I understood.

Q. You don't know of your own personal knowledge?

A. No.

Q. Do you know the number of acres that one man can locate?

Mr. AVERY: I object to that as calling for a matter of law.

A. 20 acres.

Q. Did you state that you knew the number of acres in Condon's orchard?

A. No, I don't.

Q. His orchard is near his house?

Testimony of J. R. Gilfellen.

A. Yes, right close around the house.

Q. Do you know the age of the orchard?

A. How is that?

Q. Do you know the age of the orchard?

A. No.

Q. Do you know the nature of the soil there? I suppose you did answer that though?

A. No I never went over it.

Q. Mr. Gilfellen, with reference to the nature of the country north and south of the Columbia River, North and South of the river with relation to the rock deposits or rocks that are on the surface, state whether or not there is a difference in the rock formation north and south of the Columbia River?

Mr. AVERY: I object to that as not redirect examination and incompetent and immaterial.

A. South of the Columbia River opposite of this place it is basalt. North it is granite and porphyry.

Q. Is it true that generally south of the Columbia it is basalt?

Mr. AVERY: I object to counsel leading the witness and indicating the answer.

A. Yes, sir.

Q. State whether or not you know whether the basalt appears north of the Columbia?

A. How is that?

Q. State whether or not you know whether the basalt appears north of the Columbia?

A. Whether there is any basalt shows on the north side of the Columbia?

Testimony of J. R. Gilfellen.

Q. Yes, sir.

A. Yes there is.

Mr. BLAIR: That is all.

RECROSS EXAMINATION.

By Mr. AVERY:

Q. The same reasons that would apply to good hydraulic works up there would make it a good water power, wouldn't it?

A. How is that?

Q. The same reasons why that would make a good hydraulicking plant up there would make it a good water power, wouldn't it?

A. Yes, sir.

Q. For doing any kind of service or rather, performing rather for any energy or purpose?

A. Yes, sir.

Q. A good water power, isn't it?

A. Yes, sir.

Q. The best one along the river I guess, isn't it?

A. The best on the Nespelem.

Q. Is there any other near on the Columbia that is as good as that, anywheres near that?

A. No sir, I don't think there is.

Q. You heard the testimony of Mr. Wickman, did you?

A. Part of it, yes sir.

Witness excused.

CHARLES M. WHITE, a witness called on the part of the defense, was duly sworn, and testified as follows:

Testimony of Charles M. White.

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. What is your name?

A. Charles M. White.

Q. Where do you live?

A. Nespelem.

Q. How long has you lived there?

A. About 10 years.

Q. About 10 years?

A. Yes, sir.

Q. What is your occupation?

A. Miner.

Q. How long have you been engaged in mining?

A. Since I have been in Nespelem.

Q. About 10 years?

A. Yes, sir.

Q. What kind of mining?

A. Quartz mining.

Q. Have you ever done any placer mining?

A. Placer prospecting—I have done placer prospecting?

Q. Where?

A. On the Sixes river in Oregon and on the Columbia river.

Q. Anywhere else?

A. On the Columbia river.

Q. Any other place?

A. No, sir.

Q. What has been your placer prospecting experience on the Columbia river—where?

Testimony of Charles M. White.

A. Near the Nespelem bar, above and below.

Q. When were you in Oregon at Sixes river?

A. It was 12 years ago in June.

Q. Just tell what you did there, Mr. White?

A. Why we was prospecting for box mining.

Q. What do you mean by box mining?

A. Ordinary washing with boxes.

Q. Sluice boxes?

A. Sluice boxes.

Q. And what kind of work did you do personally?

A. Why, I panned.

Q. You have panned on the Columbia river, you say?

A. Yes, sir.

Q. When was that?

A. The first time was in May, 1900.

Q. 1900?

A. Yes, sir.

Q. Were you alone at that time?

A. No, sir.

Q. With whom were you?

A. How?

Q. With whom were you at that time?

A. Mr. Nichols and Mr. Brown.

Q. You are familiar with the Peabody and Wickman placers in controversy here?

A. Yes, sir.

Q. As shown by complainant's exhibit No. 4?

A. Yes, sir.

Q. Did you at that time pan on either one of these placers?

Testimony of Charles M. White.

A. Yes, sir.

Q. With relation to the Peabody, did you pan on it, —that was in 1900, wasn't it?

A. Yes, in May.

Q. Did you do any panning on the Peabody?

A. Yes, sir.

Q. Where?

A. I panned along the south side of the Nespelem river and on the north side too.

Q. On both sides?

A. Yes, sir.

Q. Did you use the ordinary miners' pan?

A. Yes, sir.

Q. Did you find any gold?

A. Yes, sir.

Q. What kind of gold was that that you found there?

A. It was coarse gold and some fine gold.

Q. What quantity—do you recall the number of particles that you got?

A. The average number in this panning?

Q. How much did it run in point of results?

A. They run from 1 to 15 colors.

Q. One to what?

A. 15, sometimes more.

Q. Did you work on any other part of the Nespelem, other than that described?

A. Yes, sir.

Q. Where?

A. Below on the—well it was down the Columbia from the Nespelem?

Testimony of Charles M. White.

Q. I mean on the Peabody placer?

A. On the Peabody, yes sir.

Q. Did you get any colors on the surfacee of the placers?

A. Very few.

Q. Did you pan any gravel on the placers?

A. Yes, sir.

Q. With what result?

Mr. AVERY: Is that the same place you were panning or in another place?

Q. This that you refer to is on the Peabody, isn't it,—where is this last panning that you said you did?

A. It was up on this level part (indicating).

Q. What is the surface appearance on the Peabody so far as being level, undulating or having ravines in it is concerned?

A. Most of it is broken ground.

Q. That is, ravines?

A. Ravines.

Q. Did you pan in those ravines?

A. Yes, sir.

Q. Did you find gold there?

A. Yes, sir.

Q. With what results?

A. We found gold.

Q. How did the gold run in point of quantity that you found on the average?

A. Well, I should say about 6 or 7 colors to the pan.

Q. Did you do any panning at that time on the sur-

Testimony of Charles M. White.

face described as the Wickman placer on complainant's exhibit No. 4?

A. Yes, sir.

Q. Did you pan any on the surface?

A. Yes, sir.

Q. And in the gravel?

A. Yes, sir.

Q. With what result on the surface?

A. Very few colors.

Q. In the gravel?

A. The surface most of it is sand.

Q. Did you pan any in the gravel?

A. Yes, sir.

Q. Did you find any colors there?

A. Yes, sir.

Q. Did you find more in the gravel than on the surface?

Mr. AVERY: I object to that as leading?

Q. Did you?

A. Yes, sir.

Q. State whether or not you prospected in any of the shafts?

A. We sunk one shaft on what is called the Wickman placer to determine whether we could strike the gravel that shows on the river bank?

Q. Yes—well how far down did you go on that?

A. About 14 feet.

Q. What did you find?

A. We found gravel.

Q. Did you do any panning there?

Testimony of Charles M. White.

A. Yes, sir.

Q. With what results?

A. Found gold.

Q. Will you state the method of panning—how you do panning?

A. We take the gravel, put it in a pan and wash it in the river.

Q. How do you wash it—what motions do you go through, and so on?

A. Why you shake the pan and watch so and shake it and keep the gold settling to the bottom and work it in a kind of a swirl and so drive the dirt off.

Q. Do you keep it under the surface of the water or anything like that?

A. Yes, under the surface of the water.

Q. Keep it level?

A. Yes, nearly level.

Q. And soon the dirt goes off what side?

A. To one side.

Q. The lower side?

A. The lower side.

Q. Now at that time when you panned on these two placers was Mr. Nichols panning at the same time?

A. Yes, sir.

Q. With what result?

Mr. AVERY: I object to that as incompetent and immaterial.

A. About the same as I had.

Q. You saw him pan?

Testimony of Charles M. White.

Mr. AVERY: I object to that as immaterial and leading.

A. Yes, sir.

Q. How far away from you was he when he was panning?

A. He panned about the same place near there on the river.

Q. Do you recall the number of pans you took on that property?

A. Somewhere in the neighborhood of 50.

Q. You don't recall specifically?

A. No, sir.

Q. Did you ever take up or locate any of the property?

Mr. AVERY: I object to that as immaterial and incompetent.

A. Yes, sir.

Q. What did you do with reference to that?

Mr. AVERY: I make the same objection.

A. At what time?

Q. Did you locate there on the property at that time?

A. I located a claim there and Mr. Nichols one and Mr. Brown one.

Q. Upon the property covered by the Wickman and Peabody?

Mr. AVERY: I object to that as leading.

A. Yes, sir.

Q. Where were those located at that time?

A. One claim was on the east—south of the Nespelem.

Testimony of Charles M. White.

Mr. AVERY: I move to strike that out because it don't involve this ground.

Q. Answer the question.

A. The second claim was located in here (indicating) and one in here and one in on the Wickman.

Mr. AVERY: That is, you mean one on the Wickman and one on the Peabody, that is about where you put your pencil (indicating)?

A. One on the Peabody and one on the Wickman and one on the south along the Nespelem.

Q. How long were you on the Peabody and Wickman at that time?

A. I think about two days.

Q. State the character of this strip on the Peabody placer south of the Nespelem river, beginning here (indicating) and going up towards corner No. 8 on the Peabody with reference to the character of soil, sand or gravel?

A. Mostly gravel.

Q. What?

A. The lower part of it is gravel.

Q. How far does the gravel extend up the Nespelem river from the lower part?

A. Well about opposite the cabin.

Q. How far up?

A. Is the cabin there (indicating)? In about there I should judge.

Q. You indicate about opposite corner No. 7 on the Peabody placer?

A. Yes, sir.

Testimony of Charles M. White.

Q. Referring to the line running from corner 6 to corner 7 I see the figures "2678", indicating the number of feet from corner 6 to corner 7, is it about that distance?

A. I should judge so.

Q. State also the character of the country on this side of the Nespelem river with reference to its soil, sand or gravel?

Mr. AVERY: You mean the North side?

Q. The North side, yes?

A. Along the Nespelem it is mostly gravel, but if you go back a little west it is covered with sand.

Q. Are you familiar with the ravines upon the surface of the Peabody and Wickman placers?

A. The lower part of the ravines is gravel and the upper part is sand.

Q. Have you ever examined the improvement 3 ditch on the Peabody Placer and also improvement 3 ditch on the Wickman placer?

A. No sir, I never have examined them.

Q. State if you know the character of soil, sand or gravel formation along the excluded strip along the Columbia river?

A. Why it is sand on the surface and gravel under and blue clay under that.

Q. Now Mr. White did you ever—you stated that you had prospected the Columbia river at the beginning of your examination, didn't you?

A. Yes, sir.

Testimony of Charles M. White.

Q. In what direction from the Nespelem did you prospect?

A. We prospected for about 8 miles below.

Q. Below?

A. Yes, sir.

Q. Were you panning?

A. Yes, sir.

Q. With what result?

A. Most of the places we found gold.

Q. What was the character of the gold you found?

A. It is coarse gold and some fine gold.

Q. Now, Mr. White, state whether or not you know the nature of the country outside of the Peabody placer and through which the Nespelem river flows before it reaches the Peabody placer?

Mr. AVERY: I object to that as immaterial.

Q. With reference to its mineral or non-mineral character?

A. It goes through minerals.

Q. Do you know that?

A. Yes, sir.

Q. What is the character of the country through which it goes before it reaches the Peabody placer?

A. You mean—

Q. Is it mineralized or otherwise?

A. Yes, sir.

Q. What kind of minerals?

A. Gold, copper and silver.

Q. State whether or not the Nespelem river has a branch?

Testimony of Charles M. White.

A. Yes, sir.

Q. What is that called?

A. The Little Nespelem.

Q. Do you know the nature of the country through which that branch runs with reference to whether it is mineral?

A. Never was up along there, no.

Q. Do you know the length of the Nespelem river?

No sir, never was up only about 8 miles or 10.

Q. In addition to that panning that you did that you have testified to did you pan at any other time along the Peabody and Wickman?.

A. Pan at any other time?

Q. Yes, sir.

A. A week ago today.

Q. Last Thursday?

A. Yes, sir.

Q. You panned on the Peabody at that time?

A. Yes, sir.

Q. Did you get colors?

A. Yes, sir.

Q. Did you get gold?

A. Yes, sir.

Q. Where did you pan on the Peabody?

A. We panned north of the cabin in the morning and in the afternoon on the south side of the Nespelem, 7 pans.

Q. State with what results?

A. I got gold.

Mr. AVERY: You panned 7 pans on the south side?

Testimony of Charles M. White.

A. In the afternoon.

Q. Did you testify that you panned 7 pans in the afternoon?

A. Yes, sir.

Q. Did you state with what results—did you find gold?

A. We found gold in all of them.

Q. (showing bottle) I call your attention to this bottle. Can you state what that is?

A. That is gold.

Q. That contained therein is gold—will you state, if you know, where it was found?

A. Yes, sir.

Q. And when?

A. Last Thursday.

Q. And when, do you know?

A. Yes, sir.

Q. And by whom?

A. By myself.

Q. Where?

A. On the Nespelem, on the Peabody placer.

Q. Those two specks in there, what does that bottle contain—describe this, what is inside of it?

A. Two small nuggets of gold.

Mr. BLAIR: I now offer this in evidence as defendant's exhibit "A".

Q. Where did you find that gold, Mr. White, in the bottle?

A. The largest one I found on the north side of the

Testimony of Charles M. White.

Nespelem where I panned the four pans, a little above the cabin.

Q. Where did you find the smaller piece?

A. The smaller one I found in the afternoon on the South side.

Q. Do you know the weight of that large piece?

A. Yes sir, I have a certificate of it.

Q. Did you weigh it?

A. Yes sir—no sir, Mr. Stowell did.

CROSS EXAMINATION.

By Mr. AVERY:

Q. This is one of the nuggets that Mr. Wickman testified to yesterday that you found on the Peabody?

A. Yes sir, the larger one.

Q. That is the one he referred to?

A. Yes, sir.

Q. This one, I understand that that is the one, the large one you say is the one that Mr. Wickman referred to when he said yesterday that Mr. White (meaning you I suppose)?

A. Yes, sir.

Q. Got a nugget there recently?

A. Yes sir. Mr. Wickman was there at the time and Mr. Hudnutt.

Q. The Doctor?

A. Yes, sir.

Q. Where were you born, Mr. White?

A. Alleghany County, New York.

Q. How long have you lived in the west?

A. 22 years.

Testimony of Charles M. White.

Q. What is your business now, miner?

A. Yes, sir.

Q. Do you work for the Multnomah Company?

A. I have worked for them.

Q. Well, you work for them when they are working?

A. Not all the time. I worked last winter for the Rebecca Mining Company.

Q. Have you worked since then for the defendant?

A. One week.

Q. Not on these claims?

A. No sir, on the quartz claims.

Q. Are those quartz claims patented?

A. You mean the Nespelem claims?

Q. Yes, sir.

A. No sir, I don't think they are.

Q. You say that you have prospected on the Columbia river—for how much of its length?

A. For about 14 miles.

Q. About equally divided North and South of the Nespelem?

A. About 8 miles below and about 6 miles above.

Q. Did you find colors in prospecting along there?

A. Yes, sir.

Q. You done that thing very often?

A. Wherever we found gold we got colors.

Q. Did you do this on the shores of the river—banks?

A. Most of the way.

Q. Down to the water line or above it?

A. Mostly above the water line.

Testimony of Charles M. White.

Q. How far above did you go to find colors along the river?

A. Oh, some places probably fifty or sixty feet above the water line.

Q. Sometimes down reasonably close to the river?

A. Yes, sir.

Q. When I say colors I mean a speck of gold that is discernible by the naked eye, and that is about it, that is about what you call a color?

A. Well, there is some larger, some, you have some coarse gold and some fine gold that you can just see with the naked eye.

Q. What would you call that little spot which is made there by the lead of this pencil, would you call that rather coarse gold?

A. That would be about medium size.

Q. Medium size?

A. Yes, sir.

Q. Did you ever find any schist?

A. There is some in the Columbia river—very little in the Columbia along there.

Q. Along up on the Nespelem bar?

A. Very little.

Q. When you say very little do you mean that it cannot be found.

A. It can be found.

Q. You generally find it to some extent in every pan, don't you?

A. Yes, there is some, very light, floats off with the dirt.

Testimony of Charles M. White.

Q. But to an unpracticed eye it looks a little bit like the gold color in this country?

A. It is dark.

Q. Don't it depend upon the way in which it lays, the way in which the light strikes it?

A. You can get it in the light so that if the sun shines right on it, but it will not settle to the bottom of the pan like gold.

Q. It is not as heavy?

A. No sir, very light, the schist along the Columbia river has a dark blue cast.

Q. Will it easily combine with the black sand?

A. No, sir.

Q. Now these pieces of fine and coarse gold that you said you found on the river were not in quantities sufficient so it would pay you to work the placers, would it?

A. Not by panning.

Q. I mean not by panning?

A. No, sir.

Q. Well, would it pay you to work it in any other way, do you know?

A. I think it would by hydraulicking.

Q. It would not pay to sluice it or by cradling?

A. No, sir.

Q. Those fine colors, were colors, generally you have no way of saving any of them without some other appliances than a pan, is that true?

Mr. BLAIR: I object to this as not cross examination of the witness, no such matter having been entered into on direct examination.

Testimony of Charles M. White.

Q. Is that so?

Mr. BLAIR: I object to this subject matter that was not entered into on direct examination.

A. No sir. There is no way of saving them without some other appliance.

Q. You cannot, in other words, corral them, without you can get quicksilver on them, can you?

A. Not very easy, not in the flour gold.

Q. And similarly the coarse gold that don't rise to the dignity of small nuggets, that is hard to secure, isn't it on the Columbia?

A. Well, it depends on the way you have to secure it.

Q. Well, in what way can it be secured?

Mr. BLAIR: I object to this as not proper cross examination.

Q. In what way can it be secured?

Mr. BLAIR: I object as not proper cross examination and it is matters not entered into on the examination in chief.

Mr. AVERY: I think it was.

Mr. BLAIR: I simply asked the witness with reference to finding gold,—never entered into a question as to how it could be saved or whether this gold could be saved, and so on. I object to the question as too indefinite and not entered into on direct examination, the character of the gold or the size of the gold.

Q. Answer the question?

A. It could be secured with quicksilver.

Q. With quicksilver?

A. Yes.

Testimony of Charles M. White.

Q. How would you apply the quicksilver?

Mr. BLAIR: The same objection,—not proper cross examination.

A. Why you could use quicksilver to gather it in the pan after panning.

Q. How would you secure the gold that I have described by quicksilver?

A. Well it is—I have not saved gold in that way and I don't really understand, all I have done is panning.

Q. Then you don't know how the gold that you may have termed coarse gold on the Columbia could be secured, do you?

A. No, sir.

Q. What were you prospecting on the Columbia for,—for the purpose of finding where there was some place that could be profitably worked?

A. Yes, sir.

Q. Other than by hydraulicking?

A. Yes, sir.

Q. And you didn't find any place did you?

A. No, sir.

Q. What is that?

A. No, sir.

Q. You say you located on these placers, the Wickman and the Peabody, you and somebody else?

A. Yes, sir.

Q. And did you dig any holes in them?

A. Yes, sir.

Q. Where did you dig the holes?

A. We dug one on the Wickman.

Testimony of Charles M. White.

Q. Whereabouts?

A. It was somewheres on this in here on the placer (indicating), back on this strip.

Q. You mean on what we have called the excluded strip?

A. Right on the Wickman.

Q. On the Wickman?

A. Yes, sir.

Q. Well about half way from the letter "K" to the southerly line of the Wickman?

A. Somewhere in there.

Q. Did you dig any other hole or pit?

A. Not on the Wickman.

Q. Where did you dig one?

A. We dug one down here somewhere on the Peabody, about in here (indicating).

Q. Between the figure 6 and the end of the word "Peabody?"

A. Somewhere in there.

Q. Those are the only two holes you dug?

A. Yes, sir.

Q. Were those the discovery holes?

A. No, sir.

Q. You say not?

A. We didn't figures for the discovery. We only just wanted them for to hold the ground until we determined what there was there. There was a number of people staking in there at that time.

Q. This was in 1900?

A. Yes, sir.

Testimony of Charles M. White.

Q. Did you file your location notice?

A. Notice?

Q. Yes, and stake the ground and keep it?

A. Yes, sir.

Q. Have a notice?

A. Yes, sir.

Q. How many days were you in this country?

A. About two days.

Q. You then panned in the gully did you?

A. Yes, sir.

Q. And along the Nespelem river?

A. Yes, sir.

Q. And on the Columbia?

A. Yes, we panned on this part (indicating).

Q. Off the excluded strip as we call it?

A. Yes, sir.

Q. Found some colors, did you say?

A. Yes, sir.

Q. But didn't find anything that led you to believe that the claim could be profitably worked?

A. Not by boxes and sluicing.

Q. Not by box sluicing?

A. No, sir.

Q. And of course not by panning or cradling?

A. No sir, but it could be worked by hydraulicking.

Q. Did you think at that time that it could be worked by hydraulicking?

A. Yes, sir.

Q. Did you think that it could be worked—do you know where the water was that could be gotten on there?

Testimony of Charles M. White.

A. Yes, sir.

Q. And you abandoned the claims?

A. Yes, sir.

Q. How many were there that located in there, did you say three or more?

A. Three of us.

Q. Three of you?

A. Yes, sir.

Q. You located it so as to cover all of the ground or one claim only south of the Peabody—to the south of the Peabody?

Mr. BLAIR: I object to that as he didn't make any statement,—it is not in accord with his testimony.

Q. Isn't that true, Mr. White?

A. We took in a strip here to the Nespelem river, takes in some of the Peabody ground.

Q. And you went South of the Peabody ground, didn't you?

A. Part of the claim.

Q. Part of the claim?

A. Yes, sir.

Q. That is what I think?

A. Yes, sir.

Q. Where did you go to prospect after you left there?

A. We went south, further down the river.

Q. Is that the time you went on down 8 miles?

A. Yes, sir.

Q. Sage brush growing on the land at that time?

Mr. BLAIR: I object to that as not proper cross examination.

Testimony of Charles M. White.

A. Some.

Mr. BLAIR: It was not entered into in chief in any way.

Q. There was sage brush growing on it, wasn't there?

A. Yes, sir.

Q. Did you go up the gully that runs up the pan-handle of the Peabody?

A. I was up as far as the falls.

Q. Up at the upper falls?

A. There is three or four falls there.

Q. Did it strike you that water could be put on there for hydraulicking quite cheaply?

A. Yes, sir.

Q. But you didn't see your way clear to do it?

A. We didn't have the money.

Q. Were there any prospect holes in there when you went on?

A. No, sir.

Q. What did you do with the colors that you found on the claims at that time?

A. Mr. Nichols took them. I don't know what he done with them.

Q. Do you know anything about the cost of putting a hydraulic mining outfit in there?

A. No, sir.

Q. Did you ever do any farming?

A. Not in this country.

Q. Have you ever seen any farming done here?

A. Very little.

Testimony of Charles M. White.

Q. You were never on this claim from 1900 until a week ago Thursday, or last Thursday, was it?

A. I have crossed it.

Q. When did you cross it?

A. I could not state now the particular time. I have crossed it quite a number of times passing back and forth. There is a road which goes across there.

Q. Road goes across it?

A. Yes sir. There is a road comes down somewhere down there (indicating). There is a draw coming down here and the road comes across, it comes down here and goes above the cabin and goes out to the wagon—to the stage road.

Q. How far is the stage road from the claims?

A. Might be three miles.

Q. That is the stage road going from where to where?

A. From Nespelem to Almira.

Q. How far is Nespelem away?

A. I think it is between—somewhere about 5 miles I should judge.

Q. From your place?

A. Yes, sir.

Q. How much of a town is Nespelem?

A. Well there are three stores and two hotels.

Q. What is that?

A. Three stores and a hotel and probably a dozen residences.

Q. There are a good many locations on the townsite in Nespelem aren't there?

Testimony of Charles M. White.

A. Mining locations?

Q. Yes, sir?

A. No sir, not right where Nespelem is.

Q. Is Nespelem lighted with electricity?

A. No, sir.

Mr. BLAIR: I object to this as not proper cross examination. There is no possible connection in any way with anything that I have gone into.

Q. Are those shafts that you sunk, those two shafts that you sunk on the Wickman and Peabody are they still there or are they caved in now?

A. I could not say. I have not been there to examine it lately.

Q. Where is Mr. Nichols that located with you?

A. I could not say where he is.

Q. Do you know where Mr. Brown is?

A. He is in Nevada I think some place.

Q. I understand you to say you didn't know how much it would cost to put in a hydraulic outfit there?

A. No, sir.

Q. Then you don't know whether it would pay to mine it by hydraulicking or not, do you?

A. Well, with the water they have got there, I—it is my judgment it would pay.

Q. You don't know anything about how much it would cost to put it in, to put the water on there do you?

A. No, sir.

Q. That is one of the things you would have to know in order to form an opinion, wouldn't it?

A. What is that?

Testimony of Charles M. White.

Mr. BLAIR: I object to this as not proper cross examination and not having been entered into in chief.

Mr. AVERY: I am trying to get his ground for his opinion.

Mr. BLAIR: I cannot see what that would go to anyway. That would not affect his testimony.

A. I expect anybody would have to, know what it would cost to know what the result would be.

Q. Then without knowing what it would cost you don't mean to say that you know whether it would be a paying proposition?

A. I didn't say that I knew.

Q. Did you say—what did you say, if you didn't say so, that it would be a paying proposition?

A. Because I thought it would be a paying proposition.

Q. Based on how much expense to put in the plant is your opinion formed?

Mr. BLAIR: I object to all this for the reason stated before and move to strike it for that reason.

A. I could not say as I have not studied it up.

Q. Do you know how much you could spend on a plant there and have it pay?

A. No, sir.

Mr. BLAIR: I object for the same reason, and move to strike.

Q. Ever do any hydraulic mining?

A. No sir.

Q. What is that?

A. No sir.

Testimony of Charles M. White.

Q. I understand you Mr. White that you don't know anything about the cost or anything about the practical working of hydraulicking so far as expense is concerned?

A. No, sir.

Q. And you don't know how much dirt can be made to pay or how much there has got to be in a yard to pay or anything like that?

A. No, sir.

Mr. BLAIR: I object to that on the ground already mentioned and move to strike.

Q. How far from the river did you find this larger piece of gold in the bottle? Exhibit "A".?

A. It might be 50 to to 70 feet.

Q. About how far from the water?

A. Might have been 50 to 70 feet, somewhere in there.

Q. How high up from the water?

A. Why, might be 15 feet from the bed of the river.

Q. Who shoveled the dirt out—how far down did you dig?

A. About 18 inches.

Q. About 18 inches?

A. From the surface.

Q. Aid who did the digging?

A. I done it myself.

Q. Did you shovel the dirt out yourself?

A. Yes, sir.

Q. And put it in the pan and wash it yourself?

A. Yes, sir.

Q. Who was there with you at that time?

A. Mr. Wickman and Dr. Hudnutt.

Testimony of Charles M. White.

Q. Where did you come from when you went down there to dig this?

A. Where did we come from?

Q. From Nespelem?

A. From Nespelem.

Q. All of you?

A. Yes, sir.

Q. All of you had shovels?

A. No we got a pick and shovel there at the cabin.

Q. And did Dr. Hudnutt tell you that he wanted you to prospect it for gold?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. And he was with you at the time?

A. Yes, sir.

Q. And where did he tell you to prospect?

A. He didn't tell me any certain place.

Q. He was along with you when you did it?

A. Yes, sir.

Q. Were you working at Nespelem when he asked you to go down there?

A. No, we were celebrating.

Q. You were celebrating?

A. I was celebrating.

Q. The 4th of July?

A. Yes, sir.

Q. On Thursday?

A. Yes sir, we celebrate there for about two weeks.

Q. What time of day was it?

Testimony of Charles M. White.

A. It was in the forenoon.

Q. Was it the end of the celebration?

A. No, sir.

Q. Right in the middle of it, eh?

A. Yes, sir.

Q. Had you all been celebrating up at Nespelem?

A. We hadn't—what do you mean by all?

Q. You three?

A. No sir, Dr. Hudnutt drove in there and Mr. Wickman he asked me to go to the river and I went.

Q. And they went down there and they told you to do the digging?

A. They asked me to?

Q. Asked you to?

A. Yes, sir.

Q. And they stayed there and saw you dig?

A. Yes, sir.

Q. I take it from what you have testified to on direct examination, so far, that there is no gold until you get down as low, practically as low as the river, is that right?

A. There is gold in the gravel above the river.

Q. Where does that come from, do you know?

A. I could not state. It was there the first time I went up.

Q. Now going across the Nespelem where you found the smaller piece of gold that is in this exhibit "A", that was done in the afternoon, wasn't it?

A. Yes, sir.

Q. You panned four or seven pans there?

Testimony of Charles M. White.

A. Seven.

Q. Was it in the first one or seventh one or some of the middle ones?

A. What is that—when we found the gold?

Q. Yes, sir.

A. I think it was about the 4th or 5th pan.

Q. And what number pan was it in the forenoon on the other side of the river that you got this piece of gold in, can you say?

A. The second or third.

REDIRECT EXAMINATION.

By MR. BLAIR:

Q. When you were panning and found that first nugget, that is, the larger nugget, were Dr. Hudnutt and Mr. Wickman panning at the same time?

A. Yes, sir.

Q. In your cross examination Mr. Avery asked you whether while you were panning they stayed by and watched you. What do you mean when you answered that they were all standing by?

Mr. AVERY: I object to that. The answer is plain enough.

Q. You may answer?

A. Why they were there when I was panning to see the result.

Q. At what distance were they from you when you were panning this pan?

A. They might have been ten or twelve feet from me up the creek, panning at the same time.

Q. Were they at your elbow?

Testimony of Charles M. White.

A. No sir, they were not at my elbow.

Q. Did either of them throw that into your pan?

Mr. AVERY: I object to that. It is leading, and the witness cannot tell whether they did or not.

Mr. BLAIR: I have a right to ask the witness with reference to that.

A. No, sir.

Q. And at what distance was Dr. Hudnutt at the time when you shoveled the dirt into the pan, at the time when you found that large nugget?

A. I think he was up the river panning at the time that I shoveled it into the pan.

Q. And at what distance was he while you were panning?

A. He might have been ten or fifteen feet up the creek.

Q. Where was Mr. Wickman at these two times?

A. He was digging in another place and panning for himself.

Q. Did you state that you have located all of the Wickman and Peabody placers?

A. No sir, I didn't.

Q. What area did you locate—what proportion of it, of these two did you locate, in point of size?

Mr. AVERY: I object to the witness answering the question because it has been answered and answered definitely.

Mr. BLAIR: You may answer.

A. What is the size of the claims?

Q. Yes?

Testimony of Charles M. White.

A. They was 20 acres apiece.

Q. Why weren't they larger?

A. That is all the law allows.

Q. Now with reference to the Nespelem town, state the character of the inhabitants there, their nationality and race?

A. Mostly Indians, except miners.

Q. How many miners live there?

A. I could not say exactly. Maybe 30 or 40.

Q. What is the character of this hotel that you testified to. How many sleeping rooms has the hotel?

A. I could not say.

Q. Have you ever slept there?

A. Yes, sir.

RECROSS EXAMINATION.

By Mr. AVERY:

Q. You said on direct examination that the two men, Dr. Hudnutt and Mr. Wickman were standing by you there when you took out those two nuggets. Do you mean to take that back now and say that is not so?

A. They were there in the vicinity.

Q. Your answer then was not true?

Mr. BLAIR: I object to the form of the assumption.

Q. I want to know whether it was or not. I want to know which one is correct. Your first answer was not true then?

A. They was there. I called them when I finished panning.

Testimony of Charles M. White.

Q. I mean were they there as you first stated in your first answer?

A. I don't think I first stated they was at by elbow.

Q. I don't think you did either.

A. I said they was on the ground, if I remember right.

Q. No one working the claims up there, are there?

A. What claims?

Q. These two?

A. Not to my knowledge.

Q. Well, you would have seen any one that would have been working there wouldn't you?

Mr. BLAIR: I object to this question as not having been entered into on redirect examination.

Q. You would have seen them, wouldn't you?

A. I might have if I had hunted around I suppose.

Mr. BLAIR: I make the same objection and move to strike.

Q. You passed through there, you say?

A. Yes, sir.

Q. And you haven't seen anyone working on the claims? Have you?

A. Yes, sir.

Q. Whereabouts were they working?

A. Working at the falls.

Mr. BLAIR: I object to that as not proper recross examination.

Q. I mean mining?

A. No I never was there when they was mining.

Q. What is that?

Testimony of Charles M. White.

A. I never was there when they was doing any mining.

Q. You saw them working at the falls. That is where they were building the dam, was it?

A. Yes, sir.

Q. When did they build that dam?

A. I could not say whether it was three or four years ago.

Q. It was 3 or 4 years ago?

A. I should judge so.

By Mr. BLAIR: Q. In your cross examination by Mr. Avery he asked you whether when you found that large nugget Mr. Wickman and Dr. Hudnutt were standing by you and you answered yes sir. Was that correct or incorrect?

Mr. AVERY: I object as that has been threshed out long ago and also it is manifestly leading.

A. They was there in the vicinity when I washed it out and I called them and they came and looked the pan over.

By Mr. AVERY:

Q. How long were you panning those four pans?

A. Might have been an hour and a half.

Q. They panned too in the meantime did they?

A. Who?

Q. Did each one of you have a shovel and pick?

A. No we used the same pick and shovel.

Q. Just one shovel and one pick, is that right?

A. Yes sir, one would be using it while the other one was panning.

Testimony of Charles M. White.

Q. Then you all used one shovel and one pick?

A. While the other one was panning. We had two pans.

Q. Had two pans?

A. Yes, sir.

Q. There were always two men panning and one man was using the shovel and pick, is that right?

A. Yes, sir.

Q. Then when a man had used the shovel and pick did he carry them to the others?

A. No, sir.

Q. Did he leave it there?

A. Took it for himself and the other men who wanted it went and got it.

Q. Where were you digging in respect to the points of the compass. Were you digging east, west, north or south of the others?

A. I think I was west.

Q. You were digging west of the others. You mean by that you were strung along the river?

A. Yes, sir.

Q. Did you take all of your pans from the one hole?

A. No, sir.

Q. Which way did you dig from your first hole, east or west, for the other pans?

A. I went west.

Q. You say there was only one shovel among you and one pick and two pans?

A. Yes, sir.

Q. Well, who commenced digging first?

Testimony of Charles M. White.

A. I think Mr. Wickman.

Q. Then until two men were fitted out with pans there could not any one else use the shovel and pick?

Mr. BLAIR: I object to the question. The question should be what the fact was and not what could have been worked.

Q. Is that right?

Mr. BLAIR: That is apparent.

Q. There could not anyone have been panning while the shovel and pick were being used in the first instance, could there?

A. There was not.

Q. And two men could not have been panning while it was being used in the second instance?

A. We took turns and used the pick and shovel and in panning.

Mr. AVERY: That is all.

By Mr. BLAIR:

Q. It is possible that two persons could have been panning with two different pans at the same time?

Mr. AVERY: I object to that as leading and as having been gone over.

A. Yes, sir.

Mr. BLAIR: That is all.

Witness excused.

THOMAS B. EARLY, a witness called on the part of the defendant, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. State your name Mr. Early?

Testimony of Thomas B. Early.

A. Sir?

Q. State your name?

A. Thomas B. Early.

Q. Where do you live?

A. Nespelem.

Q. What is your occupation?

A. Mining.

Q. How long have you lived in Nespelem?

A. Nine years.

Q. You say your occupation is mining?

A. Yes, sir.

Q. How long have you been mining?

A. About 35 or 40 years.

Q. When did you first start mining?

A. In 1868.

Q. In 1868?

A. Yes, sir.

Q. Where have you mined?

A. Colorado, Utah and New Mexico.

Q. Any other places?

A. Washington.

Q. Have you ever mined in Colorado?

A. Yes, sir.

Q. Did you say in New Mexico or Old Mexico?

A. New Mexico.

Q. What kind of mining did you do in Mexico?

A. Lead mining—placer mining.

Q. Placer mining?

A. Yes, sir.

Q. You mean quartz mining?

Testimony of Thomas B. Early.

A. Yes, sir.

Q. Gold placer mining in Colorado?

A. Yes, sir.

Q. At what point?

A. Summit County, Colorado.

Q. You prospected there—and prospecting work?

A. Yes, sir.

Q. Did you do any panning?

A. Yes, sir.

Q. Frequently or infrequently?

A. Well frequently.

Q. How long did you work at placer mining in Colorado?

A. Worked through three seasons, three summers.

Q. At what point did you state?

A. Summit County, Colorado, close to a town named Breckenridge.

Q. What was the character of the property there?

A. Gravel.

Q. What is that?

A. Gravel and lead, etc.

Q. What was the character of your work in New Mexico?

A. Quartz.

Q. In Utah?

A. Quartz.

Q. In Washington?

A. Well quartz.

Q. Any placer?

A. A little placer, yes, panning.

Testimony of Thomas B. Early.

Q. Now where did you—how did you mine in Oregon?

A. I was prospecting for quartz in Oregon.

Q. Did you do any placer work there?

A. No.

Q. Now where in Washington have you done placer work?

A. On the Multnomah Company's placers.

Q. Have you done any panning on the Columbia or on the Nespelem?

A. Yes, sir.

Q. On the Columbia?

A. On the Columbia a little.

Q. You are familiar with the Peabody placer and the Wickman placer as shown on complainant's exhibit No. 4?

A. Yes, sir.

Q. Were you one of the locators of the Peabody placer?

A. Yes, sir.

Q. When did you first come to go to the Nespelem?

A. Well the fall I first came into the country.

Q. When was that?

A. 1900.

Q. Were you alone at that time?

A. No, sir.

A. Who was with you?

Q. Who was with you?

A. Dr. Hudnutt and a young man named Feighner.

Q. What was your purpose in going in there?

A. Prospecting.

Testimony of Thomas B. Early.

Q. For what?

A. Gold, silver, copper, lead—

Q. And minerals generally?

A. Minerals generally—anything of value.

Q. Had you any knowledge of the country before you went there?

A. No, sir. We had no company organized at that time. There was no company organized.

Q. I didn't ask you that. I asked you whether you had any knowledge of the country.

A. Of the country?

Q. Yes.

A. No sir, it was my first trip in there.

Q. Had you any information about it?

A. Well, what I had read about it.

Q. What was that?

A. That the Columbia river—

Mr. AVERY: I object to what he read as being here-say.

Q. Where did you read about this?

A. In the papers from Washington here.

Q. State the nature of the information?

Mr. AVERY: I object to it as not the best evidence, and immaterial in any event.

Q. Do you know where those newspapers are?

A. No sir—destroyed long ago I suppose.

Q. How long ago was this?

A. It might have been 12 years ago.

Q. Now can you state the nature of that information?

Testimony of Thomas B. Early.

Mr. AVERY: I object to that, if the court please, on the ground that it is heresay of the most violent character.

Q. State the nature of the information?

A. Well, that the Indians had worked—Chinamen had worked placers on the Columbia river. That the Chinamen had worked placers on the Columbia river.

Q. State whether or not you had any information of the general character of the Columbia river region?

Mr. AVERY: I object to that as calling for a conclusion of the witness and not based on facts.

A. Well, not until after we were located in there.

Q. What is that?

A. Not until after we had located in there.

Q. Until you was located in there?

A. Yes, sir.

Q. What do you mean by being located in there?

A. Making camp and concluded to stay there in the Nespelem district.

Q. Do you mean until after you had arrived there?

A. Yes, sir.

Q. And with respect to that region state what information you obtained after you arrived there?

Mr. AVERY: I object to that as heresay and immaterial.

Mr. BLAIR: I am going to put it in as part of the evidence.

Mr. AVERY: It is incompetent.

A. Of course, I heard them talking about these bars on the Columbia river, finding gold there.

Testimony of Thomas B. Early.

Mr. AVERY: I move to strike that on the ground stated in my objection.

A. (Cont.) Heavily mineralized region all through there.

Q. What is that?

A. Heavily mineralized region all through there.

Mr. AVERY: Same objection.

Q. Will you state, Mr. Early, whether or not there was at that time any general common reputation in that locality with reference to the Columbia river region?

Mr. AVERY: I object to that for the reason it is incompetent—it is incompetent; it is immaterial, and it is heresay.

A. Yes, sir.

Q. What was that reputation?

A. Well, it was good mines in there.

Q. How is that?

A. Good mines in that vicinity all through there,—also gold.

Q. State when you first saw the ground covered by the Peabody and Wickman placers as shown on complainant's exhibit No. 4?

A. I don't understand.

Q. State when you first saw the ground covered by the Peabody and Wickman placers?

A. That is in 1900, we rode across it,—the old Indian trail right across it.

Q. How soon after you went into the camp?

A. Into the—in here?

Q. Yes.

Testimony of Thomas B. Early.

A. About a year afterwards.

Q. When was it you first rode across it?

A. When we first went into that country?

Q. When you went into the country?

A. When we went into the country.

Q. It was not a year after you got there, but when you went in?

A. When we went in, yes sir.

Q. Did you make any investigation of that ground at that time?

A. No.

Q. Or notice it in any way?

A. Yes, noticed it, noticed that it was—showed placer, surface showing that it was placer all along it—all along up the river.

Q. You went through then to Nespelem you said, did you?

A. Went right up through to Nespelem.

Q. Now when did you next go upon this property?

A. I think it was in the spring of '91.

Q. 1891?

A. Yes, sir.

Q. When did you first go in there?

A. 1900.

Q. You mean 1901, don't you?

A. We first went in in 1900.

Q. And then the next time could not be 1891?

A. 1901.

Q. Well, what did you do on that occasion, if you did anything—did you do anything?

Testimony of Thomas B. Early.

A. I took a pan and pick and shovel with me and did some prospecting.

Q. Where did you pan?

A. Panned along the Nespelem creek.

Q. Where did you pan?

A. Along the Nespelem creek.

Q. Up the Nespelem creek—you mean the Nespelem river, do you?

A. Nespelem river, yes sir.

Q. And what did you do in 1900 from the time you went in there in 1900 until you went down upon the placer?

A. Well, we were prospecting for quartz.

Q. Where?

A. Up in the mountains.

Q. How far up from these placers?

A. Well, about 5 or 6 miles.

Q. You just stated that you panned along the Nespelem creek or river—with what result?

A. Very good results.

Q. What do you mean by very good results?

A. Well, several particles of gold.

Q. Several particles of gold?

A. Yes, in the pan.

Q. Do you know what relation that was to the cabin or the mouth of the river or any point there where you did this panning?

A. Yes, I panned down at the mouth.

Q. Mouth of what?

Testimony of Thomas B. Early.

A. Nespelem river and then along up to about where the cabin is now.

Q. How far is that from the mouth of the river?

A. Why, I suppose around about a thousand feet.

Q. Around about a thousand feet?

A. Yes, sir.

Q. With relation to the distance from the mouth of the river to the dam, what proportion of the distance I say to the cabin from the mouth of the river?

A. Well, I think it is—

Q. A half or a quarter of it?

A. About three-quarters of a mile.

Q. Three-quarters of a mile?

A. Yes, sir.

Q. That is the whole distance?

A. From the dam down to the mouth of the Nespelem.

Q. Three-quarters of a mile?

A. Yes sir, it may be more.

Q. What proportion of the distance is there from the mouth of the river to the cabin?

A. Well, I should think it was half a mile. I would say it was half a mile.

Q. Now where was it that you panned, did you say?

A. Right along the edge of the creek—the bench, the first bench above the river.

Q. Did you pan any in the stream,—along the stream?

A. No, didn't pan any in the stream.

Q. On what side did you pan that time—the south?

A. I panned—it would be on the north side I think.

Q. On the north side?

Testimony of Thomas B. Early.

A. On the north side.

Q. Indicate on the plat there, complainant's exhibit No. 4 just where you panned at that time?

A. (Indicating on plat) Well, right along here, in here, and on that side.

Q. Right under the word "placer"?

A. Yes, right along in here I think. I should think the cabin was right in about here somewhere (indicating.)

Q. The cabin is somewhere towards the end of the word "placer" of the Peabody?

A. Yes sir, I think that is about where it is.

Q. State the nature of those particles of gold you found?

A. Well, they were bright and pretty good size.

Q. Did you use a glass to see them?

A. No, could see them with the naked eye.

Q. Mr. Early, state if you know if there is different kinds of gold along the Columbia river?

A. Yes, sir.

Q. What are those different kinds?

A. Well, there was what they call flour gold and flake gold.

Q. Now how are they distinguished in point of actual appearance from one another—one from the other?

A. The flour gold is very fine and the float gold is kind of a leaf gold and will float on the water, go with the water.

Mr. AVERY: I thought you said flour and flake?

Testimony of Thomas B. Early.

Q. Float and flake are used interchangeably by some, are they not?

A. Yes.

Q. The term you use along the Nespelem generally is a little—?

A. Different from what they use anywhere else.

Q. Do you recall the number of colors or particles of gold you got in those pans at this time?

A. Well, I think I got five and six colors.

Q. Five and six colors?

A. Yes, sir.

Q. You don't remember specifically?

A. I don't remember just the number exactly.

Q. Do you recall the number of pans you took?

A. Oh perhaps a dozen pans.

Q. Now after that first day did you pan any upon these placers?

A. No, I didn't go up there that day. I panned along the creek. I didn't go up on the bar at all that day.

Q. Now—?

A. I did afterwards, but not that day—not that same day.

Q. You were alone when you did this panning?

A. Yes, sir.

Q. Did you after that day do any panning?

A. Yes, sir.

Q. Were you alone during that time?

A. Yes, sir.

Q. State what you did after that day in the way of panning and where?

Testimony of Thomas B. Early.

A. Well, I went along down the bank of the Columbia river.

Mr. AVERY: I move to strike it out as immaterial. It is not on these claims.

A. (Cont.) and went up on the bar.

Q. What bar—now describe it?

A. Well, it was right up in here (indicating), right up in here (indicating).

Q. On what is the Peabody placer now?

A. Yes sir. I dug down a hole there about two feet and I took a pan of dirt from there and went down to the creek and panned it.

Q. Yes,

A. I got three or four colors in that.

Q. To what depth did you dig that hole?

A. Two feet I should think.

Q. Three or four colors did you say?

A. Yes, sir.

Q. How long did you continue this panning upon the Peabody placer?

A. I think I was panning around there four days.

Q. On what point?

A. Well, it was principally on the Peabody placer.

Q. On the Peabody?

A. Yes, sir.

Q. And where on the Peabody?

A. Well, I went over on the other side of the creek, across on the other side of the Nespelem. That would be on the south side I should judge, and I prospected along there three or four different places.

Testimony of Thomas B. Early.

At this point the hearing was adjourned until 9:30 A. M., July 16, 1909.

9:30 A. M., July 16th, 1909.

Hearing adjourned until a further date by request of counsel for the defendant.

Spokane, Wash., July 20, 1909

10 o'clock A. M.

Hearing resumed pursuant to adjournment, all parties present.

THOMAS B. EARLY, recalled for further examination.

DIRECT EXAMINATION.

By Mr. BLAIR:

Mr. AVERY: I want to ask if you have brought in the prospectus?

Mr. BLAIR: I have not been able to find any prospectus. I had none given to me when I went in the case.

Mr. AVERY: That means that you will not furnish me with one?

Mr. BLAIR: It means that we can not; not that we will not. I think I can carry out your ideas by submitting the books of the company to you. The secretary is here and I think that will show the financial condition.

Mr. AVERY: That is not bringing the prospectus.

Mr. BLAIR: I understood there was such a prospectus. I think there was one issued at the first formation of the company and one later on.

Mr. AVERY: Well, have you either of them?

Mr. BLAIR: I think that the one I had was the first prospectus.

Testimony of Thomas B. Early.

Mr. AVERY: It was printed, wasn't it?

Mr. BLAIR: It was printed, yes sir.

By Mr. BLAIR:

Q. Mr. Early, you located the Peabody placer, did you not?

A. Yes, sir.

Q. When did you locate the Peabody placer?

A. I think it was the fore part of January, 1901.

Q. At the time of the location state the area included within the Peabody placer as then known?

A. Well—

Q. I mean as it lies upon the ground?

A. I located the whole of the bar.

Q. As the Peabody?

A. As the Peabody, yes sir.

Q. And then at that time the Peabody, under that name, included what is known as the Wickman, the Wickman placer?

A. Yes, sir.

Q. State whether or not that included the land called the excluded strip along the Columbia river?

A. Yes, sir.

Q. State whether or not you thereafter amended your location of the Peabody?

Mr. AVERY: I object to that as not the best evidence.

A. I don't understand the question.

Q. State whether you thereafter amended the Peabody placer location?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. (Showing paper) Mr. Early, will you identify that paper and tell what it is?

Mr. AVERY: I object to his testifying as it is not the best evidence. The paper speaks for itself.

A. Yes, I identify it.

Q. What is it?

A. That is the Peabody.

Mr. AVERY: I make the same objection.

A. It is the Peabody placer.

Q. Well, what is it?

Mr. AVERY: I make the same objection to all of these opinions on these papers.

A. The placer, that is the original.

Q. What is the paper?

A. Notice of placer location.

Q. What is that?

Mr. AVERY: I make the same objection.

A. Notice of location.

Q. Of what, the Peabody placer?

A. The Peabody placer.

Mr. BLAIR: I wish to have this marked as defendant's exhibit "B."

Paper so marked.

Mr. BLAIR: I offer that in evidence.

Mr. AVERY: Let me ask a few questions in respect to this.

Mr. BLAIR: Yes, sir.

By Mr. BLAIR:

Q. Who signed the name of J. B. Early to it, I mean to the paper?

Testimony of Thomas B. Early.

A. I think I did myself.

Q. Now look at it and see?

A. Well, that is not my writing. I think it was the district recorder.

Q. What is that?

A. I think it was the district recorder. I think that is his writing, isn't it?

Q. Well, who wrote the other names on it?

A. He did.

Q. Did he locate these claims?

A. No sir, I gave him the names.

Q. The district recorder?

A. Yes sir, the mining recorder there at Nespelem.

Q. What is a mining recorder?

A. Well, he keeps a record of all the locations made in the district.

Q. And you told him to put these names in there, the names on this paper?

A. Yes, I gave him the names.

Q. Is that the original notice?

A. Yes, sir.

Q. This is the notice that was posted on the claim?

A. No, I think not. There was one just like it.

Q. Made in the same way?

A. Yes, sir.

Mr. AVERY: I object to the introduction of this on the ground that it is immaterial and irrelevant and incompetent and does not identify the claim and it is not made as a location notice should be made, not executed so.

Testimony of Thomas B. Early.

By Mr. BLAIR:

Q. At whose request was this recorded, Mr. Early?

A. Well, I think at my request as manager.

Q. What is that?

A. I think at my request.

Q. Is that a copy of the location notice that was posted upon the claim?

A. Yes, sir.

Q. There was a copy posted upon the claim?

A. Yes, sir.

Q. Mr. Early, referring to this plat, complainant's exhibit No. 4, and stating the outline of the Peabody placer as in this notice of quartz location which is offered in evidence, describe the Peabody placer?

Mr. AVERY: I object to that as not the best evidence of the fact and calling for a conclusion of the witness, and if it shows anything, it shows on its face what it is.

A. Well, it included this whole piece in through here (indicating).

Q. Describe it by reference to some corner?

A. There is corner No. 1, that is here by the falls, isn't it?

Q. Where did it run to?

A. In a northwesterly direction, run down to the water at corner No. 2.

Q. From corner No. 2 where did it run?

A. Down to the Columbia river.

Q. And thence where did it run?

A. Then run up that line on the Columbia river and up to corner No. 4.

Testimony of Thomas B. Early.

Q. Thence where did it run?

A. Corner No. 4 that was—it was that road, yes sir.

Q. And thence where did it run?

A. Thence right along the river up here to corner No. 7, right in here (indicating).

Q. Did it go up?

A. Clear up here, back to the place of beginning.

Q. I now show you, Mr. Early, defendant's exhibit "B" for identification, and ask you to state the area included within the notice of quartz location defendant's exhibit "B" with reference to the map?

Mr. AVERY: I object to that as not the best evidence. If it is susceptible of meaning anything it shows on its face where it goes on said exhibit "B" for identification.

Q. State the original location of the Peabody placer with reference to defendant's exhibit "B" for identification?

A. Well, it originally took in all this, the whole part here.

Q. State specifically what it did take in?

A. It took in the whole bar.

Mr. AVERY: This is all under my objection.

A. Down to this corner No. 2.

Q. Did it take in the part named the Wickman placer?

A. Yes, covered that.

Q. Did it take in the part marked the Peabody placer?

A. Yes sir, all of them.

Testimony of Thomas B. Early.

Mr. BLAIR: Now I offer in evidence defendant's exhibit "B" for identification.

Mr. AVERY: I object to it as immaterial and incompetent and it is meaningless under the testimony and it contradicts the statement just made by the witness.

Another paper marked defendant's exhibit "C."

Q. I now show you defendant's exhibit "C" for identification and ask you to examine it and state what it is?

Mr. AVERY: I object to the witness stating what it is on the ground that it is incompetent, his conclusion, and it is immaterial. The paper itself shows what it is.

Mr. BLAIR: He may answer.

A. This is the notice of placer location of the Peabody placer mining company.

Q. Is that the original?

A. No sir, this is an amended one.

Q. Did you make the amended notice?

A. No, sir.

Mr. AVERY: I object to that as hearsay and incompetent.

A. The engineer made that.

Q. Mr. Early, with reference to complainant's exhibit No. 4, will you state the area included within the amended notice of placer location of the Peabody placer as shown upon that plat?

Mr. AVERY: I object to that as calling for a conclusion of the witness. It is incompetent. The papers show

Testimony of Thomas B. Early.

for themselves if they show anything what the witness is asked to say.

Q. You may answer.

A. A fraction less than 160 acres.

Q. Mr. Early, describe upon complainant's exhibit No. 4 by corners the territory included within the amended notice of placer location of the Peabody placer, being defendant's exhibit "D"?

Mr. AVERY: I object to that as utterly incompetent. The papers speak for themselves, both papers, and you can not change the papers by evidence of this character or their effect. It is not competent evidence.

A. It includes some surface that was cut out next the river and down on to the deep gulch there, which was cut out.

Q. Describe it by its corners?

Mr. AVERY: I make the same objection to all this and to all similar questions.

Q. Describe it with reference to corners?

A. Well, corner No. 1 run down here (indicating).

Q. Does it run to corner No. 2 on the Peabody placer?

A. Yes, sir.

Q. And thence where?

A. And thence to corner No. 5—no corner No. 3, of the Peabody placer.

Q. What?

A. Peabody placer.

Q. And thence?

A. Thence to corner No. 4 of the Wickman placer.

Testimony of Thomas B. Early.

Q. Of which?

A. Of the Peabody placer.

Q. And thence?

A. To corner No. 6 of the Peabody placer.

Q. And thence?

A. Up the Nespelem river to corner No. 7 of the Peabody placer.

Q. And thence?

A. Up the river to corner No. 8 of the Peabody placer.

Q. And thence?

A. And thence across to the place of beginning.

Mr. BLAIR: I offer in evidence defendant's exhibit "D."

Mr. AVERY: I object to it because same is not properly identified. It is incompetent and immaterial.

Mr. BLAIR: I want to ask another question.

Q. Was that recorded, Mr. Early, and filed?

A. Yes, sir.

Mr. AVERY: You may consider that as put in, if you want to as a part of it.

Q. Was a copy of that posted upon the claim?

A. Yes, sir.

Mr. BLAIR: I now offer defendant's exhibit "D" in evidence

Mr. AVERY: I make the same objection to that as was made before excepting as I am not objecting to the auditor's certificate on the outside as being insufficient.

Q. Did you locate the Wickman placer?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. When was that located, if you know—did you locate the Wickman placer?

A. Yes, sir.

Q. Was there any other locators?

A. Yes, sir.

Q. How many?

Mr. AVERY: I object. The record shows that it is not competent evidence.

A. I think there was five.

Q. Five in addition to you?

A. No, five altogether.

Q. Five altogether?

A. Yes, sir.

Mr. BLAIR: I ask to have this paper marked defendant's exhibit "E".

Paper so marked.

Q. I now show you, Mr. Early, defendant's exhibit "E" and ask you to examine that and state what it is if you know?

Mr. AVERY: I would like to introduce the objection that the paper speaks for itself. His statement can not change the character of the paper and it is incompetent as calling for a conclusion of the witness.

A. Well, that is a notice of the location of the Wickman placer.

Q. You have seen that paper before, have you?

A. Yes, sir.

Q. Was a copy of that posted upon the Wickman?

A. Yes, sir.

Q. And state with reference to defendant's exhibit

Testimony of Thomas B. Early.

“E” the territory that was included in the notice of mining location?

Mr. AVERY: I object to that on the ground that the paper speaks for itself and the question calls for a conclusion of the witness and it is incompetent.

Q. You may answer.

A. This territory right over here (indicating).

Q. That territory marked “Wickman placer”?

A. Wickman placer, yes sir.

Mr. BLAIR: Now I offer in evidence defendant’s exhibit “E”.

Mr. AVERY: I object as not properly identified and immaterial and incompetent, and a further objection that it is not a valid location on its face. It does not tie to any natural object or permanent monument and it is not such a location as is recognized by law. The same objection I desire to make to the other location notices that have been put in, and move to strike them out on that ground, and I will add a further objection to this defendant’s exhibit “E” that the location is not made with reference to any permanent or natural object or monument.

Q. Mr. Early, at the time when the Wickman placer was located, state whether or not it included the area called the restricted strip—excluded strip along the Columbia river?

Mr. AVERY: I make the same objection before you answer that the paper speaks for itself and that this witness is not competent to testify.

A. I don’t think it did.

Testimony of Thomas B. Early.

Q. With reference to the original location of the Wickman placer, Mr. Early, and calling your attention to defendant's exhibit "D", state whether or not the Wickman included down to the river?

Mr. AVERY: I make the same objection.

A. It did at that time, extended to the river.

Q. And did it include the excluded strip?

A. Yes, sir.

Q. State whether or not you know that the Wickman was thereafter amended by an amended location?

Mr. AVERY: I object to that as not the best evidence.

No sir, not afterwards amended.

Q. How is that?

A. Not afterwards amended.

Q. How is that?

A. I was not there during the time that the amendment was made.

Q. There was first the original location of the Wickman placer?

Mr. AVERY: I object to that as leading the witness.

A. Yes, sir.

Q. And that was followed by what if anything in the way of locations?

A. It was followed by old boundaries.

Q. By which?

A. The old boundary of the Peabody placer.

Q. State whether or not the Wickman location was ever amended?

Testimony of Thomas B. Early.

Mr. AVERY: I object to that as not the best evidence.

A. Well, I don't know that that was so.

Q. Mr. Early, calling your attention to complainant's exhibit No. 4, and calling your attention to the excluded strip?

A. I suppose where it was—that was included until lately. I supposed that was included until here lately.

Mr. AVERY: I object to that as there has not been any question asked and it is a voluntary statement of the witness.

Q. The fact I want to get, Mr. Early, is whether or not that excluded strip was taken away from the original location of the Wickman?

Mr. AVERY: I object to that as leading and also as having been answered in the answer that the Wickman had never been amended.

A. That was the original location clear to the river, took the river as one boundary line.

Q. Yes.

Mr. AVERY: Same objection, and I move to strike the answer for the same reason.

Q. What is the area of the Wickman placer as it is now in point of acreage?

Mr. AVERY: I object to that as having been gone over. It is not the best evidence unless he has surveyed it and then it would be accumulative and repetition.

Q. You may answer.

A. Something less than 100 acres, a fraction.

Testimony of Thomas B. Early.

Q. Has the original location—what area did it include?

Mr. AVERY: I make the same objection to that and also that it is immaterial.

Q. First the original location, how much did the Wickman include in point of acreage?

A. A hundred acres and a little more.

Q. How is that?

A. A hundred acres.

Q. Did it include more than 100 acres?

Mr. AVERY: I object to that as leading.

A. I think so, yes sir.

Q. How much over?

A. I don't remember.

Q. Do you know whether it was restricted to 100 acres in the original location?

Mr. AVERY: I object to that as immaterial and incompetent.

Q. State whether or not now—?

A. There was more land in it than we could locate under the five names.

Mr. AVERY: I object to that also and move to strike it as not being responsive.

Q. Do you know the reason, state yes or no?

A. No.

Q. Going back to the time when you located the Peabody placer state whether you did any panning on the Peabody placer, did you?

Mr. AVERY: I object to that as having been gone over.

Testimony of Thomas B. Early.

A. Yes, sir.

Q. State whether or not you did any panning after locating the Peabody placer?

A. Yes, sir.

Q. What panning did you do and for what length of time and the number of pans and what was the result?

Mr. AVERY: The same objection as being repetition.

A. Well, I panned—

Q. You can answer.

A. Well, I panned on the Wickman placer 3 or 4 days.

Mr. AVERY: I object to that as not responsive.

Q. I asked about the Peabody?

A. On the Peabody placer 3 or 4 days before it was located.

Q. With what results; what did you find if anything?

A. Very good results.

Mr. AVERY: I object to that as a conclusion.

Q. What did you find?

A. Found particles of gold in panning the dirt, in panning the gravel.

Q. State whether or not you recall the number of pans you panned before locating?

A. I must have panned 50 or 100 pans I expect at that time.

Q. What results did you get in this number of pans?

A. Well, I got several particles of gold in nearly every pan.

Testimony of Thomas B. Early.

Q. Where did you pan with relation to the top surface or the gravel or where?

A. We panned the gravel and some top surface, some top sand.

Mr. AVERY: I object to that as too indefinite and uncertain and does not show where the gravel is or where the top dirt is.

Q. Did you pan the surface?

A. Yes, some.

Q. Did you find any gold in the surface?

A. Some very fine colors.

Q. You panned the gravel?

A. Yes, sir.

Q. Did you find colors there or not?

A. Yes sir, coarser particles of gold in the gravel.

Q. Did you pan the narrow strip to the south of the river?

A. Yes, sir.

Q. With what result?

A. Very good results.

Q. Now after you located there, Mr. Early, did you do any panning?

A. Yes, sir.

Q. What length of time?

A. Well, I was down there a month and I was panning every day more or less right along.

Q. Can you state approximately the number of pans that you panned during that time?

A. Oh I should think 400 or 500 pans practically.

Testimony of Thomas B. Early.

Q. Can you state approximately what the average result was?

Mr. AVERY: I object to your calling for the average result—what the average result was. He should show the specific result.

Q. You can answer.

A. Well, it was very good.

Mr. AVERY: I object to that as a conclusion.

Q. What did you find?

A. I called it pay gravel, it would pay to work.

Q. Did you find any gold?

A. Yes, sir.

Q. This gold that you found could you see it with the naked eye?

A. Yes, sir.

Q. At the time you testified, Mr. Early, that you had located the Peabody upon the ground also now included within the Wickman, did you at that time pan upon that part which is now the Wickman?

A. Yes, sir.

Q. With what results?

A. Very good—good results, colors.

Mr. AVERY: I object to that and move to strike it out as being a conclusion entirely.

Q. What did you find there specifically?

A. Gold.

Q. What?

A. Gold in the gravel.

Q. Gold in the gravel?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. Now, Mr. Early, will you state why you were panning at that time after you had located?

A. Well, we were panning it to make sure it would be a pay; that was about all.

Q. Now state what particular conclusion you personally had come to as a result of the panning with reference to the value of the ground as a placer proposition?

Mr. AVERY: I object to that as immaterial and incompetent.

A. Well, I concluded—

Q. What is that?

A. I concluded by getting that water—

Q. Well, just state shortly what your conclusion was, whether it was a good or a bad placer proposition?

A. Well, by getting the water on that ground it was good property. That was the conclusion I came to.

Q. Did you pan the big gravel bank that you have testified to on the south side of the Nespelem?

A. Yes, sir.

Q. What part of that did you pan?

A. I panned from the river clear to the south.

Q. With what result?

A. Found gold.

Q. Did you ever pan near the falls or above the falls or in that locality?

A. Yes, sir.

Q. About where did you pan?

A. Well, it is about where they are excavating for to put in a little power plant.

Testimony of Thomas B. Early.

Q. What did you find there if anything?

A. Very coarse particles of gold.

Q. Could you describe the Peabody placer with relation to its surface features?

A. Well—

Q. State whether or not there are any ravines upon the Peabody placer?

A. Yes, there are.

Q. Two or three?

A. There are two or three ravines that go right across it to the river.

Q. State the nature of the soil as to sand and gravel?

A. Well, it shows sand and gravel in the bottom of these ravines.

Q. Will you state with reference to the little power plant?

A. Yes, sir.

Q. What is the size of the foundation you referred to?

A. 25 by 30 feet, I believe.

Q. 25 by 30 feet?

A. Yes, sir.

A. Sir?

Q. What is the purpose of that foundation?

Q. What is the purpose of the foundation?

A. Well, to put in a little power plant there to handle a little saw-mill, was the object.

Q. A saw mill for what purpose?

A. To cut lumber for flume lumber.

Q. To cut lumber for flume lumber?

A. To cut lumber for flume lumber.

Testimony of Thomas B. Early.

Q. Mr. Early, can you state whether or not there is a ditch upon the Peabody and Wickman placers?

A. Yes, sir.

Q. What is the purpose of that ditch?

A. To take the water from the river to placer mine.

Q. In what way is the intention to use that?

A. Well, at that time it was for ground sluicing.

Q. Now, Mr. Early, state the—the dam and falls are located near corners No. 8 and No. 1 of the Peabody placer are they not?

A. Yes sir. I think the placers take in the falls, covers the falls.

Q. And a dam has been built across there a little further up?

A. Further up the river, about two hundred feet above the falls.

Q. Two hundred feet above the falls?

A. Yes, sir.

Q. Now, Mr. Early, state where this ditch called improvement No. 3 ditch taps the river or approaches the river with relation to the dam?

A. Well, it is below the dam, but it is above the power plant, the excavation for power plant, right in here (indicating).

Q. State whether any work has been done near the dam up in here?

A. Yes, sir.

Q. What is the nature of the work?

A. Well, it is cutting out a flume bed for a ditch in

Testimony of Thomas B. Early.

the place,—A flume bed to carry the water down to this point above the excavation for a little power plant.

Q. State whether that flume has any other purpose?

A. Yes, sir.

Q. What is that?

A. To carry it around the hill for hydraulicking purposes.

Q. Mr. Early, state whether or not you have ever had any experience in hydraulicking?

A. Yes sir, worked on a placer mine one time.

Q. Where?

A. In Colorado.

Q. What place

A. What?

Q. What place?

A. Colorado.

Q. What place in Colorado?

A. Gold Run.

Q. State generally the conditions existing there with reference to the height of water in Gold Run?

Mr. AVERY: I object to that as immaterial and incompetent and irrelevant.

A. Well, they didn't have a very—

Q. How high was it in point of feet above the placers?

Mr. AVERY: I make the same objection.

A. Well, the best fall they could get was sixty feet.

Q. 60 feet?

A. Yes, sir.

Q. Was this before you went to Nespelem?

Testimony of Thomas B. Early.

A. Oh yes, yes sir.

Q. Mr. Early, state whether or not you know those elements that would make a given place valuable or adapted for hydraulicking?

A. Yes sir, I think I do.

Q. What are those elements?

A. Well, it is the amount of water and dumpage.

Q. The amount of water?

A. And the dumpage you have to have for a placer claim.

Q. Which has to be located above?

A. The water, the amount of water.

Q. You call that a head, do you not?

A. Yes, that is a head.

Q. And when you speak of dump, what do you mean?

A. Where the tailings are carried away.

Q. Now so far as the water on the Wickman placer is concerned, state what the head of water there is in point of height above the land?

A. Well, it has been estimated 2 or 3 times.

Mr. AVERY: I object to the estimation of it.

Q. State approximately the height?

A. Oh about 300 feet.

Q. About 300 feet?

A. Yes, sir.

Q. That is the height of the water in the river?

A. Yes, sir.

Q. You say the height above the land or above the Columbia river?

A. Above the land.

Testimony of Thomas B. Early.

Q. What would be taken as the dump on this property?

A. Well, the gradual slope to the river.

Q. What disposition would be made of the tailings?

A. Well, the tailings would go into the river or pile upon the flat ground, on the level ground.

Q. What was the nature of your work on this other placer?

A. Doing a little of everything.

Q. Well, specifically what do you mean?

Mr. AVERY: I object to that as immaterial, irrelevant and incompetent.

A. Shoveling bedrock and running gravel into the flumes and so on.

Q. What is so on?

A. Well, all kinds of work excepting I had nothing to do with the hydraulicking.

Q. Nothing to do with the hydraulicking?

A. Along the flume run though most of the time.

Mr. AVERY: I move to strike out his answers in regard to hydraulicking as he has shown himself to be incompetent to testify to it.

Mr. BLAIR: I didn't ask him in regard to those things as an expert.

By Mr. BLAIR:

Q. Now, Mr. Early, referring to the time when you went to Nespelem and located these properties had you any knowledge of the mineralized or non-mineralized character of the Columbia river?

Testimony of Thomas B. Early.

Mr. AVERY: I object to that as having been thoroughly gone over.

Mr. BLAIR: Not with this witness.

Mr. AVERY: The witness was over that last Thursday or Friday when he was on the stand.

Mr. BLAIR: I don't think so, Mr. Avery.

Q. You may answer.

A. Yes, sir.

Mr. AVERY: However, I can only make that objection. I don't want you to be bound by my statements. I object to that as having been gone over and as the same thing he testified to when he was on the stand the last day, which I think was Thursday, and the further reason that it is incompetent and immaterial under the issues of this case.

A. Yes, sir.

Q. What was that knowledge that you have of the—?

A. Well, I read—

Mr. AVERY: I object for the further reason that he has not shown himself competent to answer the question.

Q. Did you say what was your knowledge of the—?

A. That the bars of the Columbia river carried gold.

Mr. AVERY: Same objection to all of it.

Q. State whether or not you are acquainted with the mineralized or non-mineralized character of the country upon the Big Nespelem?

A. Yes, sir.

Q. What is the character of the country, mineralized or non-mineralized?

Testimony of Thomas B. Early.

A. Mineralized.

Q. What does it bear?

A. Some of it—

Q. What minerals does it bear?

A. Gold, silver, copper, nickle, lead, and all kinds of minerals.

Q. With reference to the Little Nespelem are you acquainted with the mineralized or non-mineralized character of it?

Mr. AVERY: Same objection.

A. Yes, sir.

Q. What is the character of that?

Mr. AVERY: Same objection to all these questions.

A. It has copper and gold.

CROSS EXAMINATION.

By Mr. AVERY:

Q. Where do you reside, Mr. Early?

A. I reside in Nespelem.

Q. Where were you born?

A. New York state.

Q. What part of New York?

A. Warren County, the northern part.

Q. You are an officer of the defendant.

A. Yes, sir.

Q. What office do you hold?

A. Superintendent.

Q. How long have you been superintendent?

A. Oh about 8 years.

Q. Eight years you have been superintendent, ever since the company was formed?

Testimony of Thomas B. Early.

A. Yes, sir.

Q. And a stockholder too during that period?

A. Yes, I have some stock in the company.

Q. You are one of the locators of both the Wickman and the Peabody?

A. Yes, sir.

Q. Have you ever seen the prospectii that were gotten out?

A. Yes, I think I saw one of them when they were first issued.

Q. What is that?

A. I think I had one of them when they were first issued.

Q. Two prospectii have been issued, haven't they?

Mr. BLAIR: I object to this examination as not within the proper limits of cross examination and not entered into in chief and I move to strike for that reason.

A. Why, I don't know—I could not say as to that. I know that I never saw but one of them.

Q. When was that?

A. That was when the company was first organized.

Q. How many of those were printed?

Q. I don't know; I could not say.

Q. Do you know where any of these prospectii are now?

Mr. BLAIR: Same objection.

A. No sir, I do not.

Q. How long since you have seen one?

Mr. BLAIR: Same objection.

Testimony of Thomas B. Early.

A. Well sir, it must be 6 or 7 years, if not longer.

Q. What are your duties as a superintendent?

A. Well, to look after the mining department.

Q. The mining part of it?

A. Yes, sir.

Q. Are you looking after the mining part of the work of two claims now?

A. Well no, not just at the present time.

Q. Who is?

A. The doctor, Dr. Hudnutt.

Q. Well, is he the superintendent now?

A. No sir—well, I don't know, just now he is the manager of the company.

Q. Well, you look after the work up there in the plant don't you?

A. Well—at the camp.

Q. Well, you are not doing anything on this Peabody placer now are you—the Peabody and Wickman?

A. Well, I don't know, I think there is a man down there, but I would not be positive. I don't know.

Q. When did he go down if you know?

A. No, I don't know of it. I have not seen him work.

Q. Never did do any mining on those claims, did you?

A. Oh yes, we did.

Q. What was that?

A. Panned around all along in the claims.

Q. That is what you call mining it is?

A. Well no, I am speaking about the quartz claims more.

Q. Where are the quartz claims?

Testimony of Thomas B. Early.

A. They are up on what is known as the Squaw Hump Mountain.

Q. You never did any mining on the Wickman and Peabody, did you?

A. Yes we did, that is with sluice boxes.

Q. With sluice boxes?

A. Yes, sir.

Q. When did you put the sluice boxes in?

A. A year ago last spring.

Q. About a year ago?

A. Yes, sir.

Q. That was after this case had commenced; after the investigation in this case?

A. Yes, sir.

Q. At the time that the sluice box was put in you knew that the government was investigating this case, didn't you?

A. Yes, sir.

Q. You never have worked it since, have you?

A. No, sir.

Q. Not working it now, are you?

A. Not just at the present time, no.

Q. Where did you get the water to put in the sluice boxes?

A. Out of the creek, our sluice boxes run to the side of the creek, in fact in the creek you might say.

Q. Now whereabouts were your sluice boxes located?

A. Well, it was along in this, below the cabin on the creek on the mouth of—the cabin would be there (indicating).

Testimony of Thomas B. Early.

Q. Now after having gotten the location of the word "placer on the Peabody claim on exhibit No. 4, where was the sluice boxes in respect to that—the end of the word placer—?

A. Well, I should say it was right in here (indicating).

Q. Just below the letters "cer" of the word?

A. Yes, right in there.

Q. Where do you think the cabin is?

A. Well, I should think, should judge the cabin came is through here (indicating).

Q. Well, do you mean north approximately of corner No. 7 and on the north side of the Nespelem river?

A. Yes, sir.

Q. How far up the river is it?

A. Well, right close to the bank, the bank of the river.

Q. How big a sluice box was it?

A. 14 feet long, 14 by 16 feet, I forget.

Q. How long did you work at the sluice box?

A. Well sir, we worked that sluice box I guess about a month.

Q. Who worked it?

A. A man named Moore and Bordeaux and myself occasionally.

Q. Did you all work all of the time?

A. No, they two worked with the sluice box a good deal of the time and I was prospecting for places for it along the bank.

Q. Where did you prospect for it?

Testimony of Thomas B. Early.

A. Well, along on the bank of the creek.

Q. Below?

A. Below, yes sir.

Q. Did you say Bordeaux and Moore?

A. Yes, sir.

Q. Where is Moore?

A. Well, I believe he is over in Nespelem.

Q. Where is Bordeaux?

A. He is there too I think.

Q. You say you did not work on the sluice box very much of the time?

A. Part of the time.

Q. Part of the time?

A. Part of the time.

Q. Well, about how much of the time?

A. Oh probably a third of the time.

Q. Probably a third of the time?

A. Yes, sir.

Q. Well, how long did Bordeaux and Moore work there?

A. Oh they worked there together all the time that they were there, they were there part of the month.

Q. How much of the month were they there?

A. Were they there?

Q. Yes, sir.

A. All of the month.

Q. Worked all of the time?

A. And more too, yes sir.

Q. Are they both working for the company?

A. No sir, I think Bordeaux is.

Testimony of Thomas B. Early.

Q. You think Bordeaux is working for the company?

A. I think so, I would not be positive.

Q. Did he spend all of his time with the sluice boxes?

A. Well, at least pretty much.

Q. Does Bordeaux live up there?

A. Yes, sir.

Q. Near the claims?

A. No, he lives up in Nespelem.

Q. Did he spend any of his time clearing sage brush off the claims?

A. I think he did.

Q. What?

A. I think he did clear off a little sage brush there at one time.

Q. For the company?

A. I believe so.

Q. How much did he clear?

Mr. BLAIR: I object to this. It is beyond the limits of cross examination and not gone into in chief, and I move to strike it for that reason.

A. A little—small strip probably.

Q. Well, he cleared 8 or 10 acres, didn't he?

A. No, sir.

Q. He didn't?

A. I don't think he cleared an acre or half an acre.

Q. Are you certain?

A. I don't think he cleared half an acre. I don't remember.

Q. What was he clearing for?

Testimony of Thomas B. Early.

A. We calculated to take water down through there in a ditch.

Q. In a ditch?

A. Yes, sir.

Q. What was he clearing it for?

A. Well sir, I don't know. I don't know what he was clearing it for, I could not say.

Q. You could not say what he was clearing it for?

A. No sir. Only for a water way, something of the kind.

Q. For what?

A. For a water way.

Q. Well, you know that he was clearing it for a water way?

A. Well, I don't know it for certain, no. I don't know what he was clearing it for. I don't know. No—because I was not down there at that time, in fact didn't have nothing to do with it.

Q. Well then, how do you know—who told you that he was clearing it?

A. Well, I think it was Dr. Hudnutt.

Q. Dr. Hudnutt told you that he was clearing it, did he?

A. No, he didn't tell me—didn't nobody tell me until I saw it there.

Q. What?

A. Didn't anybody tell me until it was all over, that is, what it was for.

Q. That is all of the mining—you have now described,

Testimony of Thomas B. Early.

all of the mining that was done on the claim, haven't you—on the two claims?

A. There has been a good deal of mining done on the claims.

Q. Well, what—tell us what it is?

A. Well, sluicing and panning and prospecting.

Q. Well, you call panning around there—do you call that mining?

A. Well, it is prospecting the ground for mining.

Q. Do you call that mining—I want to find out what you call mining?

A. I don't know as you would call it mining exactly—it is prospecting for mining.

Q. Well, have you told us all of the mining that was done on the two claims?

A. Well, there is several shafts put down on the two claims, there was one—

Q. You put those down when you first discovered it did you?

A. Yes, we put down some, altogether I guess there must have been—I guess there must be 16 or 17, maybe more.

Q. Well, how many of those were put down when you located—at the time of your location?

A. Well, every twenty acres recorded.

Q. Every 20 acres recorded would have its discovery shaft?

A. I thought it was a good idea to put down a discovery shaft every 20 acres.

Mr. BLAIR: I object to this as a conclusion of law.

Testimony of Thomas B. Early.

Q. You thought it was a good idea to put down a shaft on every 20 acres?

A. Yes, sir.

Q. And that is how the shafts happen to be put down?

A. Yes, sir.

Q. Well, now have you told us all of the mining that was done on the claim?

A. Well, I think—you want—there is the building of the cabin there, a log cabin.

Q. When did you build the log cabin?

A. Well, that must have been built in 1903,—and helped build some wagon roads through there, a wagon road.

Q. That wagon road runs through the claims, doesn't it?

A. Yes, runs through the claims.

Q. This is the stage road for Nespelem, isn't it?

A. No, sir.

Q. This is the stage road that goes to Nespelem?

A. Well yes, you can go to Nespelem on it by going way up around.

Q. The wagon road is not confined to the use of the claims, is it?

A. Not particularly,—when going to the bench to get its supplies there they use it.

Q. For what purpose was that road built, when you said you built a road?

A. Well, to make it easier, in order to go up the big gulch which runs right straight through the Nespelem flat around the mouth—the bank.

Testimony of Thomas B. Early.

Q. That was for taking ore from the quartz claims and mines up there, wasn't it?

A. No, sir.

Q. It was not?

A. No, sir.

Q. It is a public road, is it?

A. Yes, sir.

Q. And is very much of it on the claim, is there—claims?

A. Oh yes, quite a bit of it on the claims, in fact the Indians and Halfbreeds used the road clean through all the claim once.

Q. Anyway the Halfbreeds used the road—everybody in the country uses it?

A. Everybody, yes sir.

Q. It was used by people for hauling to the country and quartz mines above?

A. Well, we used it for hauling supplies down to the river when we were working and any tools, etc. We used to haul the tools and stuff to the low country when we were working there.

Q. In connection with the quartz locations up above?

A. No, it didn't connect with it.

Mr. BLAIR: Observe the questions that are asked of you.

Q. Didn't you use that road at all in connection with your quartz—the company's quartz locations up above?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Was any quartz hauled down the road from your claims?

A. Yes sir, there was quartz hauled down.

Q. Then it was used for that purpose, wasn't it?

Mr. BLAIR: I object to that as already answered.

A. Yes, sir.

Q. Now you say, or you said, I believe, on your direct examination the other day that there was an Indian trail running across the claim?

A. Yes sir, there is an Indian trail across there.

Q. Where does that run there, taking exhibit No. 4 here?

A. It comes down the Nespelem—

Q. Just where does it run across the claim?

A. Well, it goes right on down the claim.

Q. From where to where?

A. Comes down this gulch here (indicating).

Q. Comes down to corner No. 2 of the Peabody?

A. Yes sir, somewhere in there.

Q. And where does it run to?

A. Runs right on down through the Wickman and on down to the Columbia river.

Q. Runs down westerly and northerly through the Peabody and Wickman to the end of the Wickman about?

A. Yes, sir.

Q. And then down to the river?

A. Down the river, follows the Columbia river.

Q. Follows the Columbia river?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. Then there is really a road running lengthwise on these two claims—on there?

A. Yes, a trail.

Q. Where did you prospect up and down the river, the Columbia?

A. Well sir, down the river along the placers here.

Q. You mean along the Nespelem?

A. Along the Columbia.

Q. I am asking about the Columbia?

A. Started in at the mouth of the Nespelem.

Q. Well, started in at the mouth of the Nespelem?

A. The mouth of the Nespelem and prospected all along the bank.

Q. How far did you go down?

A. Well, went way down to this big gulch here.

Q. The end of the Wickman?

A. The end of the Wickman.

Q. Is that as far down as you went?

A. No sir, went on down the river some six miles below.

Q. How much did you go above the Nespelem in your prospecting?

A. Well, didn't go very high up, very far up—probably a quarter of a mile from the Nespelem.

Q. You refer now to the Nespelem?

A. From the mouth of the Nespelem, way up the Columbia.

Q. That is the question I asked you.

A. Well, take it that way.

Testimony of Thomas B. Early.

Q. You prospected about a quarter of a mile up the Nespelem?

A. Up the Columbia river from the mouth of the Nespelem.

Q. You are running your hand up the Nespelem—you mean here up this way (indicating)?

A. Up this way.

Q. A quarter of a mile in here (indicating)?

A. Prospected along, that is about it.

Q. Where else on the Columbia did you prospect at all?

A. Down about 6 miles below.

Q. As I understand it then—I asked you if you had prospected along the Columbia at any other place than between north, a quarter of a mile north of the Nespelem and six miles approximately south of the Nespelem?

A. No, sir.

Q. I understood you to say that there were placer diggings up and down the Columbia?

A. Yes sir, I have heard so.

Q. You didn't see enough in there to warrant you in going up or down?

A. Yes, I saw enough down below there to warrant us, but it was a very light gold.

Q. Very light gold?

A. Yes, sir.

Q. You saw enough to warrant you, did you there?

A. On the bank, yes sir.

Q. Of the excluded strip?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. You found plenty of gold there, did you?

A. Yes, sir.

Q. Was that the light character of gold?

A. No, sir.

Q. That was not the light character of gold?

A. No, sir.

Q. But you didn't see fit to finally locate that into the Wickman?

A. Well, I had it located in there once.

Q. Why didn't you stay in, or keep it in there rather?

A. I don't remember what the engineer's idea was.

Q. You were a practical miner though, weren't you?

A. Yes, a quartz miner, yes sir.

Q. That is it?

A. In quartz mining.

Q. You are not a practical miner in placer mining?

A. Well, I have placer mined considerably off and on too.

Q. When you say that you are a practical man in quartz mining then you mean to say you are not so good a one in placer mining as in quartz?

A. Yes, about as good.

Q. About as good, more so?

A. A practical miner?

Q. You mean to say you are a practical miner?

A. Yes sir, but I am not an expert.

Q. You don't consider yourself an expert placer miner?

A. No, sir.

Q. Or a quartz miner, an expert quartz miner?

Testimony of Thomas B. Early.

A. Well, now I don't claim that title at all.

Q. How much—how many pans did you pan on this excluded strip?

A. Oh well, I guess I must have panned probably 50 or 60 pans along down there.

Q. Did you get color down there?

A. Yes, sir.

Q. How did you do it, did you get it right on the gravel that was at the edge?

A. I would take off a little.

Q. Dig off a little?

A. Scrape off a little, fill up the pan and go down to the river and pan it.

Q. What was the character of the gold that you found on this excluded strip?

A. I would say that it was a kind of coarse particles of gold.

Q. Coarse particles of gold?

A. Yes, sir.

Q. You thought that was a gold, did you?

A. Yes sir, it was heavy gold.

Q. Heavy gold?

A. Yes, sir.

Q. What do you mean by heavy gold?

A. Well, gold that you can usually see in the pan, will rattle in the pan.

Q. Who was with you when you were panning there?

A. Oh well, sometimes I was panning alone and at other times there were parties with me.

Q. Were they panning, too?

Testimony of Thomas B. Early.

A. No.

Q. They were just seeing you pan?

A. Just look on, yes sir.

Q. When did you do this?

A. Well, along in 1902.

Q. 1902?

A. Yes, sir.

Q. But you never tried to work it down in there?

A. No, we didn't have the water to do it.

Q. Did you find gold in every one of those shafts you sunk on the Wickman and Peabody on every 20 acres?

A. Yes, I think we found gold in every—there are two we didn't get colors in.

Q. When you say you found gold up there you mean that you found colors, don't you?

A. Colors—particles of gold.

Q. None of those holes could be profitably panned, could they?

A. Well no, not with a pan. You could not profitably pan them.

Q. What is that?

A. It looked like, having a good head of water on there—but of course you would have to wash it all off.

Q. What is that?

A. By having a good head of water there you would have to wash all of it off in there.

Q. What do you mean by that?

A. Then you get all the gold.

Q. What do you mean by that?

Testimony of Thomas B. Early.

A. After panning—well yes, to wash it in. If there is anything there to catch it. All the placers have barren places in.

Q. All placers have barren places in them?

A. Yes, sir.

Q. Now small colors, fine gold that you are describing as finding on the excluded strip don't necessarily indicate a paying claim, does it?

A. Yes, sir.

Q. How?

A. By having the water on it so you could wash and handle it with water?

Q. Well, why didn't you take in the excluded strip then?

Mr. BLAIR: I object to that as the witness has testified that he did take it in once.

A. I did take it in once.

Q. I ask you why you didn't keep it in there?

A. The engineer I suppose gave his reasons why for excluding it, for cutting that out. If I did know I have forgotten. I don't know.

Q. Where did the gold in the excluded strip come from, do you know?

A. No, I suppose right through the bar.

Q. Or was it always there?

Mr. BLAIR: I object to this question as it is a hard matter to answer.

Mr. AVERY: He has answered harder ones than that.

Mr. BLAIR: But not of the same nature.

Testimony of Thomas B. Early.

Mr. AVERY: No, that is true.

Q. Do you know?

A. Well, I suppose it was washed in there.

Q. Washed in from what direction?

A. Might have come down the Nespelem creek. There is no telling where that creek used to run on the surrounding hills there.

Q. Well, now, you say you panned this neck up on the Wickman there above the excluded strip, rather east of the excluded strip?

A. Oh yes, I did.

Q. Did you?

A. Yes, sir.

Q. Tell me where you found some gold on there?

A. Well, I found it.

Q. In that place around in there (indicating)?

A. In the big gulch.

Q. That is off on the end, is it?

A. Yes, sir.

Q. And that is off the claim, isn't it?

A. That was included in the claim first.

Q. I mean now, I am talking about this gold?

A. I think it is off now, yes sir.

Q. Why didn't you take that in?

A. Well, I don't remember why the engineer left it out.

Q. Now tell me some place on the Wickman where you actually found gold?

A. Well sir, along the ditch here.

Q. You are on the Peabody now?

Testimony of Thomas B. Early.

A. I mean where the ditch comes through here on the Wickman, I cannot see anyhow—well right along about in—let's see—along about in here (indicating), on the ditch.

Q. That is you are running your finger through along the ditch between the word "placer" and the end of the ditch on the north?

A. Yes, sir.

Q. That is where you found gold?

A. I got gold in two places in there.

Q. Was that before or after the ditch was built?

A. That was after the ditch was built.

Q. In the ditch did you find gold?

A. Yes, right in the bottom of the ditch.

Q. How many colors did you find?

A. I remember I found five in one pan and 7 in another.

Q. Now will you tell me, or do you know of some other place on the Wickman where you found gold?

A. Yes, I think there is a place right in there (indicating). I am not positive.

Q. You are indicating—right in here (indicating)?

A. Yes, sir.

Q. Right half way across the claim to the end of the letter D in "Wickman"?

A. Yes, sir.

Q. You found gold there—did you sink a shaft there?

A. Yes, sir.

Q. And how many colors did you find at that time?

A. I think it was 8, somewhere about 8 or 9.

Testimony of Thomas B. Early.

Q. How far down did you go in that shaft?

A. I think it was 11 feet.

Q. You think 11 feet?

A. Yes, sir.

Q. You found it at the bottom?

A. Yes, sir.

Q. Did you find gravel down there 11 feet?

A. Yes, sir.

Q. How deep was the gravel?

A. Well, I didn't go through it, more than a foot or so, such a matter.

Q. What is that?

A. We dug into it more than a foot or such a matter.

Q. Did you get down to bedrock?

A. No, we didn't get to bedrock there.

Q. You don't know how much lower bedrock was down than you panned?

A. No, I do not.

Q. What other places on there did you find gold on the Wickman?

A. Well here (indicating), up in here along this end of this excluded strip here, two or three places.

Q. How many colors did you find there?

A. Well, it run from five to nine.

Q. You didn't get colors in every pan did you, Mr. Early?

A. Nearly every pan, yes sir.

Q. That is you found specks of gold?

A. We would find specks, particles.

Q. The gold you have referred to since you have

Testimony of Thomas B. Early.

been giving your testimony on the Wickman claim was this fine specks of gold, wasn't it?

A. Well we had specks along in here, around this gulch.

Q. I know, but there, off the Wickman?

A. Yes off the Wickman claim.

Q. Now I ask you again if the gold you describe as having found on the Wickman wasn't those specks of gold?

A. It was rather fine, different places finer in places.

Q. That I believe you said was all the places in which you said you found gold on the Wickman?

A. Yes sir. Well the discovery shaft here had gold too. The discovery shaft of the Wickman.

Q. Where is the discovery shaft of the Wickman?

A. It is up here on the upper end.

Q. Up in the point there?

A. Up in the point.

Q. Towards corner one?

A. Yes, sir.

Q. How deep did you go down in that?

A. I don't remember—about 12 feet.

Q. Did you strike gravel?

A. Yes, sir.

Q. Did you strike bedrock?

No, sir.

Q. You don't know how thick that gravel is up and down?

A. No I don't, but right above this is a pretty high bank or gravel.

Testimony of Thomas B. Early.

Q. Well how much gold did you find—about the same in there?

A. Yes, sir.

Q. Well I mean—

A. I panned 3 or 4 pans from there.

Q. Panned 3 or 4 pans from there?

A. Yes, sir.

Q. In the discovery shaft?

A. Yes, sir.

Q. And got colors in most of them?

A. Yes, sir.

Q. Not all of them?

A. I think there was only one pan missing.

Q. And what would the others go—one two or three?

A. From 3 to 7 and 8.

Q. These fine specks of gold?

A. No sir, they were coarser, they were coarser.

Q. Now that is all of the mining, if we should term it such, that was done on the Wickman isn't it?

Mr. BLAIR: I object to the insinuation contained in the remark of counsel.

A. Well that was about it.

Q. Now do you know—I believe you said, if you didn't just correct me, that you didn't know how deep the gravel was on the Wickman?

A. Where we dug that shaft, no sir.

Q. Well at any other place on there—I will put it to bedrock—how deep was bedrock there on the Wickman?

A. Well on the lower end of it—

Testimony of Thomas B. Early.

Mr. BLAIR: What do you mean by the lower end?

A. Next to the river. There was bedrock along there, what they call bedrock, the clay, and the gravel is there in places there is gravel 30 feet deep and running along 100 feet there, it would be probably eight feet.

Q. It runs from 8 to 30 feet?

A. Yes, sir.

Q. That is on the southwestern line of the Wickman claim?

A. Yes sir, next to the river.

Q. Next to the river?

A. Yes, sir.

Q. Well that is in the excluded strip, isn't it?

A. Well yes that is where it shows strongest. It runs right back in the placer.

Q. Yes, that is true, but what you refer to now is on the excluded strip, isn't it?

A. I should think so, yes sir.

Q. Well there is less dirt on the excluded strip above the gravel than there is on the Wickman above the line isn't there?

Mr. BLAIR: I object to that as being argument of counsel.

A. I think not.

Mr. BLAIR: I move to strike.

Q. How were you going to work the Wickman by hydraulic process?

A. Well we would work from the bank here of course—the bank of the river.

Q. From the bank down on the excluded strip?

Testimony of Thomas B. Early.

A. Well again, we could work it the other way right here, right in through here (indicating).

Q. Where would you take your water from?

A. Take it from up here, up at the dam as we call it.

Q. Just describe the machinery and plant for the purpose of working the Wickman?

A. Well we would bring the water down here and have a reservoir in here (indicating).

Q. When you say here it don't mean anything to the reporter. Just state as near as you can on the map, the relative position or otherwise. How would you work this by hydraulic process. I refer to the Wickman now?

A. Well I could—of course—the Peabody placer would be worked out first—there is no doubt about it and then come right along and work in here on the Wickman placer and turn the water this way (indicating). In case that is done—

Q. You say you would work out the Peabody first?

A. Yes, sir.

Q. You would work north in your hydraulic process?

A. Well on the Wickman, go south.

Q. This way is north?

A. Yes, sir.

Q. Now how would you hydraulic?

A. We would work north of course.

Q. Work north?

A. Yes sir. Cut a pit in it.

Q. Cut what?

A. A pit as they call it and wash out the gravel.

Testimony of Thomas B. Early.

Q. Describe a pit and its use?

A. It is a large excavation and worked out by the water, as the water would work it out and then about—

Q. Where does the soil and gravel, etc., go that comes out of the pit?

A. Goes through the flume.

Q. Goes through the flume?

A. Yes, sir.

Q. You never made the pit or flume did you?

A. They carry them off.

Q. You never made them on this claim, the pit or flume?

A. No we didn't have the water.

Q. Didn't have water?

A. To make it.

Q. Didn't have any water up in the Nespelem River above the falls?

A. Yes, sir.

Q. But never took it down on the Wickman?

A. Didn't get it down on the Wickman.

Q. You never connected this end of the ditch with the river, did you?

A. No. We never connected her, that is to take the water down.

Q. Have you any idea how much it would cost to remove the soil and gravel from the Wickman?

A. Well with the head of water that we could get there it would not cost very much.

Q. It would be a very easy thing to do, would it?

A. Yes, a very easy thing.

Testimony of Thomas B. Early.

Q. When you got this water in the ditch what would you do next? in order to get your hydraulicking plant to going.

A. On the Wickman?

Mr. BLAIR: I object to that as immaterial.

A. Oh well, just go to work and wash it out through there,—I don't know just how we would do it. I could tell better after we started in. That is a pretty hard problem to answer right there.

Q. You don't know whether you would take the water immediately from the ditch or immediately from the dam, do you?

A. Oh we would take it from the dam of course.

Q. Take it from the dam?

A. Yes, down through—we could utilize the ditch.

Q. You could utilize the ditch for hydraulicking, would you?

A. Yes, we would use the ditch for hydraulicking. That was the object of cutting the ditch.

Q. And is there any sagebrush on the Wickman claim?

A. There is on the Wickman, not very much.

Q. Some soil on top there, isn't there?

A. Well if you call sand soil.

Q. You don't mean sandy loam?

A. No sir, not loam, straight sand.

Q. Any brush on it up there?

A. Well there is a piece of what is called—that they call sagebrush or grease-wood, a kind of a scrub brush.

Q. Scrub is it?

Testimony of Thomas B. Early.

A. Scrub brush, some call it grease-wood. I don't know whether that is its name or not.

Q. Stock ranges on the claim, don't it?

A. Oh just casually the stock goes over there going down to the river to drink.

Q. And browse and graze on the claim, don't it?

A. Oh they feed around there a little, yes sir.

Q. Then there is some grass or grazing there, I take it?

A. Oh a little bit.

Q. Don't you think if water was put on there it would grow other things than grass?

A. Well it might.

Q. Never tried it?

A. No, sir.

Q. Never had any water on it?

A. No, sir.

Q. Do you know how many yards of dirt would have to be removed by hydraulicking to get down to bed-rock?

A. No sir, I don't.

Q. The gold if there was any there would be on bed-rock, wouldn't it?

A. It would be right to bedrock, I suppose.

Q. At the bottom of the gravel?

A. At the bottom of the gravel.

Q. And you would have to move from 8 to 30 feet of gravel on the Wickman?

A. Yes, sir.

Q. And how much soil above that?

Testimony of Thomas B. Early.

A. Well not more than a foot or such a matter. I don't know if I remember right.

Q. Do you want to change that answer any?

A. Well, what do you call soil?

Q. I mean soil above the gravel, sand or any dirt or anything?

A. Oh yes there is some sand on it, probably a foot, two or three feet of sand, it varies all along.

Q. What do you mean by saying that when you dug these pit holes down there you found gravel I think once you said, at 11 or 14 feet?

A. 11 feet.

Q. At 11 feet?

A. Yes, sir.

Q. Well then didn't you say 14 feet in another hole?

A. Yes, sir.

Q. Well that is on top of the gravel, isn't it?

A. That is on top of the gravel, yes sir.

Q. You would have to take that off too wouldn't you?

A. Yes certainly.

Q. That would go on top of the 8 to 30 feet of gravel?

A. Yes, sir.

Q. You don't know how much it would take to remove it, do you?

A. Well no, I don't know. It would not take very much with water on it.

Q. Do you know the cost?

A. Oh no, I don't know.

Q. Whether it could be profitably worked or not

Testimony of Thomas B. Early.

would depend on what it would cost to move the dirt, would it?

A. Well it can be easily worked.

Q. How do you know that it could be profitably worked?

A. Well with good head of water on it you would clean it off in no time.

Q. That is what I say regarding working it cheaply in the gravel—the good head of water is there?

A. You cut down to bedrock and then go right ahead and you can tear it loose.

Q. I believe you said that could have been very cheaply done there?

A. Yes, sir.

Mr. BLAIR: I object to the insinuation in the last question—the next last preceding question.

Q. All of that country around there, I believe you said in your direct examination the other day, has more or less gold or colors that can be found, small specks of gold?

A. Yes, sir.

Q. But you don't attempt to say that by any other means than hydraulicking that you could work these two claims profitably, do you?

A. Yes, sir.

Q. Do you?

A. Yes, sir.

A. Well work it—if a good head of water in ground sluices, what is called ground sluicing.

Q. What is ground sluicing?

Testimony of Thomas B. Early.

A. Where you have a ditch and water running through a gravel bank at the bottom, continuous stream.

Q. Well is that susceptible of being done?

A. Yes, sir.

Q. Would you just tell us how you would do it, on this may, complainant's exhibit No. 4?

A. I would bring the water down and have a reservoir, just turn here in the ditch and have our flume, after getting a pit started, built right up in there to work.

Q. That is cheaper than hydraulicking, isn't it?

A. No sir it don't handle dirt so cheaply.

Q. Don't handle dirt so cheaply?

A. No sir. My first intention was to work it that way. That was my idea and then thought it was better to put in a power plant and handle it and thought we could make it pay all right in that way.

At this point the hearing was adjourned until 2:00 o'clock P. M., same date.

Spokane, Wash., July 20, 1909.

2 o'clock P. M.

Hearing continued pursuant to adjournment, all parties present.

THOMAS B. EARLY, recalled for further examination.

CROSS EXAMINATION (Con't.)

By Mr. AVERY:

Q. I understood you to say that hydraulicking is cheaper than ground sluicing on these claims?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. Now just tell—give us a detailed description of how you would work the Wickman claim by hydraulic process.

A. Well I would bring the water along down in here (indicating).

Q. Just tell it so we will understand—bring the water down where?

A. Down here to corner 7 of the Wickman and start in.

Q. How would you bring it down there?

A. Through a flume or pipe line.

Q. Through a flume or pipe line?

A. Yes, sir.

Q. How big a flume and pipe line?

A. Well it would take—I don't know just exactly.

Q. What?

A. I don't know just the size of the pipe.

Q. I say how much pipe and how much flume?

A. Well it would be about a 5 foot flume.

Q. 5 feet square flume?

A. 5 foot flume on the bottom.

Q. What is a flume—what do you mean by a flume?

A. Well it is built out of lumber to carry water.

Q. What?

A. Built of lumber to carry water.

Q. Is it enclosed over the top?

A. No, sir.

Q. It is 5 feet at the bottom and how high on the sides?

A. 4 or 5 feet.

Testimony of Thomas B. Early.

Q. About square?

A. Yes, sir.

Q. Pretty near?

A. Pretty near square. . .

Q. Well how big a pipe would you use if you used a pipe?

A. Well it would be—

Mr. BLAIR: Now do I understand this to be how much pipe is used in hydraulicking?

A. How much pipe is used in hydraulicking—how much pipe would you use there?

Mr. AVERY: We are talking about the process for working these claims.

A. Of course there are different ways of working it by pipe line and flume.

Q. You have told us the size of the flume that it could be worked by, now tell us the size of the pipe line that it could be worked by?

A. Well they use different sizes.

Q. Well what size would be the right size to work this by?

A. Well I don't know. I cannot say as I ever figured on it.

Q. That would be an enclosed round pipe of iron?

A. Yes, sir.

Q. Well where would you take this water after you had brought it down with the flume?

A. Well take it around in around up here (indicating)—take it on the upper side of the ground on the north side.

Testimony of Thomas B. Early.

Q. On the north side of the ground?

A. Yes, sir.

Q. Then how would you let it out?

A. Well have a gate—carry it down—carry it down in the ditch and carry it down into the ditch that we made.

Q. Carry it down in a ditch?

A. Carry it down in a ditch if you want to.

Q. Well how is the right way to do—how did you figure on doing it?

A. Well the way we used to do to carry it out in a hose—where I placer mined they had a hose.

Q. Did they have a hose out of the flume?

A. Had it out of the pipe and then the reservoir and the hose was attached to it. They got the water in the reservoir from the pipe.

Q. How many gates would you have in this flume?

A. Well there are several gates in the flume.

Q. How many would you have in this flume on this proposition?

A. You could have 3 or 4.

Q. Well how many would you have?

A. Well I don't know, never figured on it. I don't know.

Q. Then as a matter of fact you made up your mind that it could not be profitably worked by ground sluicing—did you make up your mind to that effect?

A. No sir, I did not.

Q. Now where were the 3 gates or 4 gates?

A. Well you could have them in there at any place.

Testimony of Thomas B. Early.

Q. Where does the water go to when it gets out of the gate?

Mr. BLAIR: I object to this line of questioning unless it has relation to some specific plan that the witness has in mind and contemplated.

Mr. AVERY: I am perfectly willing to restrain it—he said that he was bound to ground sluice it.

Q. How would you ground sluice this claim then?

A. Well have a reservoir.

Q. Where would you have the reservoir?

A. Somewhere up close to the pipe line.

Q. Somewheres?

A. Near the pipe line.

Q. That is how far up to the dam?

A. Well that would depend on the length of the pipe line.

Q. Did you have any plan for ground sluicing this?

A. Well I did, yes, when we first put in this ditch here.

Q. What was your plan there?

A. Our plan was to ground sluice it, carry the water in a ditch to that gate there and then run in—

Q. Have one gate where?

A. Wherever we were going to take the water out.

Q. Where?

A. Well no, up on the flat there,—that would be along in here somewhere (indicating).

Q. What is that?

A. On the Peabody placer.

Q. Whereabouts on the Peabody placer?

Testimony of Thomas B. Early.

A. Well, somewhere between the mouth—500 or 600 feet from the mouth of the Nespelem.

Q. 500 or 600 feet from the mouth of the Nespelem?

A. Yes, sir.

Q. You mean 500 or 600 feet say east of corner 6 of the Peabody?

A. Yes I think it would be east.

Q. Now, right next to the river?

A. Yes, sir.

Q. There would be a gate to get the water out of the reservoir—how would you get the water into the reservoir?

A. Well we would have a gate in from the flume into the reservoir.

Q. Have a gate from the flume into the reservoir—how would you run it from the flume into the reservoir?

A. Well have a little gate in there of course.

Q. What connection would there be between them?

A. Well depends on what the flume was—iron.

Q. If it was iron?

Q. If it was an iron flume, how would you connect the reservoir with the iron flume?

A. Fasten it along here where the flume comes to the reservoir.

Q. What is the connection that you would use?

A. It is made of metal.

Q. Just another pipe?

A. Yes, another pipe.

Q. Another pipe?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. How big is the pipe?

A. Well they have different sizes, I don't know. Of course I cannot tell just what size flume or pipe you would have in there.

Q. Well that runs from the flume, running along the northern portion or easterly portion of the Wickman down by an iron pipe into the reservoir 600 feet from the corner six?

A. No that is where I would take it out. We would take the water out up here and run it down to the Nespelem River.

Q. I thought you said you run it down there, would have to run it down there to the reservoir?

A. No the reservoir is up.

Q. What?

A. The reservoir is up at the pipe line.

Q. Didn't you just say that the reservoir is down here about 600 feet from corner 6 and next to the river?

A. No sir I didn't understand that I said that. What I meant was that the reservoir would be up here (indicating).

Q. Up where?

A. Up here on the pipe line, on the ditch line and then runs the water down.

Q. Where is the reservoir now do you say? or where did you plan it should be?

A. Well somewhere up here (indicating) along this country north 600 feet from the mouth, up in here (indicating).

Testimony of Thomas B. Early.

Q. Well let's get it a little definite, Mr. Early, and let's see where we are at.

A. We are on the Peabody placer.

Q. All right.

Q. Now where would the reservoir be?

A. The reservoir would be here on the pipe line, right close to it.

Q. Right close to the pipe line?

A. Yes, sir.

Q. Well then that was different—you never did go on and build a reservoir down 600 feet east of corner 6 on the Peabody and north of the river?

A. The reservoir, no sir.

Q. How big is this reservoir to be or was it to be?

A. Well I couldn't say.

Q. Didn't you have some plans about it?

A. Well I had a little plan, but nothing definite.

Q. You never thought very seriously about doing it by ground sluicing, did you?

A. Well yes I did at one time.

Q. When was that time?

A. That was in 1903 I think.

Q. You made your estimate—how big a reservoir was it to have been?

A. I didn't have any plans for that particularly, the size of the reservoir, no sir.

Q. Would it make any difference with the reservoir whether the line was a flume 5x5x5 or a pipe line from the dam down to the reservoir?

Testimony of Thomas B. Early.

Mr. BLAIR: Different in what respect, so the witness will understand.

Q. Don't you understand it, Mr. Early?

A. No I do not.

Q. You have explained about a flume running down here 5 feet square and also about a pipe line running down, the size of which you do not know. Now I ask you if it makes any difference with the reservoir whether it is a pipe line or by flume 5 feet square, whether the water runs in an iron pipe or a flume, does it affect the reservoir in any way?

A. I don't know.

Q. Now are you able to tell me how you think you would work it by hydraulicking?

A. Well, yes, I think so.

Q. How did you get the water out of the reservoir then or did you intend to?

A. Attach another pipe to it and we use a canvas hose.

Q. I mean what were you going to do it up here with?

A. Take it out of the pipe line.

Mr. BLAIR: I object to that.

Q. Take it out of the reservoir?

Mr. BLAIR: I object to it.

Q. Where were you going to take it from?

Mr. BLAIR: I object to the insinuation contained in counsel's question that there was any definite detailed manner intended by this witness. He didn't tes-

Testimony of Thomas B. Early.

tify that he intended any definite plan or had any definite plan in view, but testified just contrary to that.

Q. Can you tell me how you are going to take it out of the reservoir?

A. Well I don't know just how I would take it out.

Q. You don't know just how it would be done, do you?

A. No I do not.

Q. You don't know how it would be done to work it to the best advantage, do you?

A. To the best advantage would be with the hydraulic.

Q. Hydraulicking would be best?

A. Yes, I think so.

Q. Well all right. Hydraulicking is now the best you say, now how would you work it by hydraulicking? Now when you are referring to the map refer so that it can be properly understood as the reporter takes it down.

A. Well after you have water there.

Q. Where?

A. Down on where we were going to work.

Q. How were you going to get it down there? With a pipe line or a flume?

A. One of them.

Q. The same kind of a pipe line or flume that you constructed a little while ago?

A. Could do it that way and take it down—well it would have to be a flume.

Q. It would have to be a flume?

Testimony of Thomas B. Early.

A. Yes, sir.

Q. Then you couldn't run a pipe line down?

A. You could run a pipe line either one.

Q. Why did you say it would have to be a flume then?

A. Well either one could be used.

Q. Did you mean anything when you say it would have to be a flume in this particular case?

A. No.

Q. You take it out of the dam—it would have to be an open flume?

A. It would have to be an open flume, yes sir.

Q. Now how far down would that flume go—about what point on the map—from the dam I suppose?

A. How far down?

Q. Yes—mention some place there to describe it?

A. Bring it down in here somewheres (indicating).

Q. About half way between “discovery” on the Wickman and corner 7 of the Peabody?

A. Yes, sir.

Mr. BLAIR: I object, Mr. Avery, he pointed there.

Mr. AVERY: I have got a perfect right—I want the facts approximately. I didn't ask him to give it exactly—between discovery and corner 7, I mean in there.

A. Well a little west of it.

Q. How far west on this paper?

A. There, about a quarter of an inch.

Q. Well where is that?

A. That is in between diagonally between corner No. 1 on the Wickman and corner 7 of the Peabody, isn't it?

Testimony of Thomas B. Early.

Q. That is No. 7 on the Peabody?

A. Yes, sir.

Q. Well do you mean now—do you mean—you change your finger every time, Mr. Early, I want to get it down here right.

Mr. BLAIR: Suppose you examine him with reference to the ground. It is one thing to give it on the ground and another thing to give it on the map.

Mr. AVERY: This witness has been testifying particularly to this plan on other points.

Q. Now I will go a little further and is it between A in “placer” in “Peabody placer” and discovery point, how would that be, half way between, is that the point. I have gone now half an inch west from where I was. There is “discovery” and there is “A” in “placer,” “Peabody placer.” Now is it about half way between those two points?

A. I should think it would be right in about here (indicating).

Q. Right north of the letter “L” in “placer”?

A. Yes, sir.

Q. And half way to the north line of the Wickman?

A. Yes, sir.

Q. Now you would bring the water down there. How much fall has it accomplished at that point, do you think?

A. Well I never made an estimate on it.

Q. Very well then—you have observed it of course and been over it a great many times?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. About how much fall is there between those two points. I want it just as near as you can give it.

A. I should think about a 250 foot fall.

Q. You don't use a reservoir in hydraulicking, do you—of the kind you mentioned in ground sluicing?

A. No, sir.

Q. Is there any further fall then?

A. Oh yes there is.

Q. After you get to the end of this sluice over the letter "L" in "placer"?

A. Yes, sir.

Q. What confines the water then, a pipe or another sluice?

A. Well you are working another place.

Q. What does that have to do with another drop of 250 feet, a drop in here (indicating)?

A. Well it is from here to here (indicating) from the dam down.

Q. What we have been talking about is the ditch that runs down above "L" in the word "placer." Now that is made of wood 5x5, or is that a pipe?

A. Well that is what we made a flume bed for.

Q. What does the water empty itself into?

A. Well it would empty itself into the reservoir I suppose, or should do so.

Q. I thought you said they didn't have reservoirs in hydraulicking?

A. Well we have pipes. The giants and hose and then it is attached to the pipe.

Testimony of Thomas B. Early.

Q. And is it a pipe you have mentioned, a pipe then for the water instead of a flume?

A. At different places.

Q. The giant & hose is attached—

A. Uses the water of—

Q. The giant & hose is attached to the flume, is it, at the end?

A. It is not attached to the flume, no sir.

Q. What is it attached to?

A. The same reservoir there. It takes the water from the flume into this reservoir and then the hose, or whatever is used is attached to it to take it down on the ground where you want to use this.

Q. This is a flexible hose, is it, how large?

A. The one we used when we were on Gold Run and worked there was an 8 inch hose.

Q. Now do you say that you attach the hose to the pipe line or flume?

A. Well attach it to the reservoir also.

Q. You always have a reservoir in hydraulic mining?

A. Yes, sir.

Q. How long is this hose that runs from the reservoir that is located at the end of this pipe line for hydraulicking—how long is the hose?

Mr. BLAIR: I object to that unless it has relation to the specific hose that this witness has in mind. I object as immaterial and irrelevant.

Mr. AVERY: You may answer it.

Testimony of Thomas B. Early.

A. Well that depends on the—well I could not say just how long it would be for sure on the ground.

Q. Did you make any figures or estimate on that?

A. No, sir.

Q. The place where you would have your reservoir would be about the same position for hydraulicking that it would be for ground sluicing, wouldn't it?

A. Yes, sir.

Q. Well, how would you cart this hose around from one part of the ground to the other?

Mr. BLAIR: I object to that as absolutely immaterial.

Q. Now you have to move it, don't you, sometimes in order to keep it on the banks?

A. Yes sir. Well we could run quite a while in one station—at least we did where I worked.

Q. Do you string it along the ground do you?

A. Yes, sir.

Q. And have two men hold the nozzle and carry it around?

A. No there was only one that held the nozzle where I worked, the one man.

Q. Well now where would you commence your work after you had got the reservoir in on this claim, if you know, between the letter "L" in "placer" and "discovery" or approximately there for hydraulic mining—where would you commence to tear down the dirt?

A. Well I don't know just where we would commence.

Q. Where would you put the dirt that you tore down?

Testimony of Thomas B. Early.

A. Well we would wash it down into the creek or river, run it right into the river.

Q. Into which river the Columbia?

A. Run it into the Nespelem River.

Q. The north side of the Nespelem River?

A. Oh, down there, yes sir.

Q. Right south of this discovery point for instance?

A. Oh yes—about 15 to 20 feet wide at high water it is a great deal wider.

Q. You prospected some along the Nespelem creek, didn't you?

A. Yes, sir.

Q. Or river?

A. Yes, sir.

Q. In what places on the Nespelem River did you prospect?

A. I prospected from the mouth—the mouth here.

Q. Now let me ask you how much of the prospect—that you have testified to was done before you got your patent or before the company got it?

A. No not all of it. We had a big portion of it done.

Q. Well where did you prospect along the Peabody on the river, the Nespelem River?

A. Right along up from the mouth, the mouth of the river.

Q. That is the end of the claim?

A. Well yes that was on the end,—is on the Columbia river.

Q. The end of the claim is running north from this corner 6 and you went up this way (indicating) east?

Testimony of Thomas B. Early.

A. I would say about a thousand feet, I think, approximately. .

Q. That is about as far as you went, wasn't it?

A. We prospected further up, prospected up to the dam.

Q. What did you mean by saying that you panned a thousand feet from the mouth?

A. Well at that time perhaps,—yes, it was at that time.

Q. Now you mean to say—I want to understand this—now you mean to say that instead of panning a thousand feet that you panned the whole length of the river on the claim?

A. Afterwards, after we had prospected this thousand feet, later on then we went up.

Q. When did you do that, lately?

A. Well, about a year ago.

Q. After this suit was commenced?

A. No, not up the river. That was before. When I prospected along up these thousand feet there, it was before the suit was commenced .

Q. And then when the suit was commenced you prospected the balance?

A. Prospected more, yes sir.

Q. When you were prospecting on the stream there you didn't prospect in the stream, did you?

A. No, sir.

Q. You prospected on the north bank?

A. On the north bank, yes sir.

Testimony of Thomas B. Early.

Q. You said there were different kinds of gold along the Columbia River?

A. Yes, sir.

Q. What is that?

A. Yes, sir.

Q. Flour and flake gold?

A. Yes, sir.

Q. Flour gold is quite fine, isn't it?

A. Yes sir, very fine particles.

Q. And flour gold is what men commonly call colors, isn't it—what do you understand by the word "Color"?

A. Well it is pretty fine gold, but some that you can see without a glass.

Q. Did you use a glass when you were up there?

A. Yes I had a little magnifying glass.

Q. You had a magnifying glass and you used it on all of the pans that you took?

A. No sir.

Q. Flake gold and float gold was it?

A. Some places.

Q. Very readily carried off isn't it or not?

A. Yes, very light.

Q. Floats in the water?

A. Floats in the water.

Q. They are hard to secure, aren't they, that kind of gold?

A. Well, they have a way of securing them.

Q. What is the fact about the effect of hydraulic mining carrying off gold of the finer character?

Testimony of Thomas B. Early.

A. Well if they have—

Q. What is that?

A. Where they use a long flume they catch a great deal of it.

Q. How much, do you know what they secure in hydraulic mining, or what they estimate the loss is?

A. No sir, I don't.

Q. From your experience do you know anything about it?

A. Well I do not, we had in the placer mining where I worked we had fine gold, but they got most of it.

Q. You got some of it?

A. Yes, sir.

Q. You think in the fine gold that you got over 50 per cent of it, do you?

A. Oh yes, yes sir.

Q. Where did you say that you took a dozen pans and got 5 or 6 colors, in your direct examination?

A. Well—

Q. What?

A. Well I panned so much there I can't just remember the places?

Q. You don't know where that was?

A. No sir, I did a great deal of panning.

Q. That is a pretty good water power you consider, don't you Mr. Early, on the Wickman claim?

A. On the Wickman?

Q. On the Peabody?

A. Peabody claim?

Q. Yes.

Testimony of Thomas B. Early.

A. Yes—well I don't know as it is anything extra.

Q. Do you mean to say that you don't think it is a good water power?

A. Well it may be a good water power.

Q. Don't you think that it was?

A. Well I thought it was a pretty good water power for the purpose, yes sir.

Q. Well—

A. To carry down there.

Q. Did it ever occur to you from seeing that water power that it was good for anything else?

A. No, sir.

Q. Never—didn't think it would run machinery for any other purpose?

A. Well I thought it would run machinery, yes sir.

Q. For other purposes than mining?

A. Well I didn't think of the other purposes at that time, no sir.

Q. Did you think you could irrigate the lower ground there with that?

A. No sir, I never thought of it.

Q. Never thought of that?

A. No, sir.

Q. You mean by that that it could not be irrigated?

A. Well I suppose it could, yes sir.

Q. No reason in the world why it could not, is there?

A. No, sir.

Q. By a gravity system, is that right?

A. Well, I don't know. I don't know much about irrigation at all,—in fact I don't know anything about it.

Testimony of Thomas B. Early.

Q. Is that below bedrock on the Wickman?

A. It don't get down to the Wickman placer.

Q. What is that?

A. It don't run down as far as the Wickman placer.

Q. Does the Nespelem River go down to Bedrock on the Wickman placer—below bedrock on the Wickman placer?

A. No, sir.

Q. It does not?

A. No, sir.

Q. It is above it is it?

A. Well it is lower down, the river is lower down of course.

Q. But you have an idea, do you, where bedrock is on the Wickman placer?

A. No I have not.

Q. You have not?

A. No, sir.

Q. Then you don't know whether the Nespelem River is or not below bedrock on the Wickman placer?

Mr. BLAIR: What do you mean by the Nespelem River, Mr. Avery, do you mean the falls, or what portion of it?

Mr. AVERY: That witness and I understand each other all right.

Mr. BLAIR: I don't think the witness does.

A. No I do not.

Q. Then let the witness say so if he does not.

A. I have already stated that I did not.

Q. What is your answer?

Testimony of Thomas B. Early.

A. Well sir I don't know.

Q. Your answer to my question is that you don't know whether the river is below the Wickman bedrock or not?

A. That is my answer.

Q. Referring to the bedrock on the Peabody placer or that part of it north of the Nespelem, is that bedrock below or above the Nespelem river?

Mr. BLAIR: I object to that unless counsel will state what he means by bedrock.

Mr. AVERY: The witness understands and I understand, there is no trouble about that at all.

A. I don't understand what you mean by bedrock.

Mr. AVERY: I object to counsel telling witness that he don't understand when he does. If you don't understand me just say so.

(Question read).

Mr. BLAIR: I object further to the question upon the ground that it does not specify what part of the river is meant.

A. Well, I don't know what you call the bedrock.

Q. Well, what do you call bedrock?

A. Well there is a clay there that some call bedrock and others say it is not.

Q. What do you call it?

A. I go with the general opinion.

Q. What?

A. I go with the general opinion.

Q. What is the general opinion?

A. Well that is bedrock.

Testimony of Thomas B. Early.

Q. What?

A. That clay.

Q. Now calling the clay bedrock, will you answer my question. Do you want the question repeated?

Mr. BLAIR: The witness has testified that he does not know where bedrock is on the Peabody.

Mr. AVERY: I object to counsel telling the witness what to testify to.

Q. Now will you answer the question. Assuming that clay is bedrock?

A. Well there is some of it that is above the river and some below. It seems to run in dykes.

Q. You say some of the bedrock is below and some is above?

A. Yes, sir.

Q. Now what part—where is the bedrock below and where above the river?

A. Several places right along down through here (indicating).

Q. How much of it is—what part of it is below and what part is above—refer to the map and give it as plainly as you can.

A. Well down here towards the mouth.

Q. Yes.

A. Of the river it is below apparently and then it is above.

Q. Down there it is below?

A. Yes, sir.

Q. How far does that condition exist up?

A. Well it dips, kind of dips to the southwest.

Testimony of Thomas B. Early.

Q. You mentioned rather to the northeast—do you mean southeast?

A. Southeast, yes sir.

Q. It dips this way (indicating)?

A. Yes, sir.

Q. Now the bedrock is just above—slightly above I take it here at the mouth on the north side.

A. At the mouth on the north side, yes sir.

Q. How far does that condition extend?

A. Well it goes probably—well I don't know—I could not say. It is not very extensive.

Q. Anyway, I take it that from that point approximately at the end, at the west end of the Peabody claim,—that is what you mean, isn't it?

A. Yes, sir.

Q. At that point you say it dipped?

A. No, I don't mean the west end of the Peabody claim, it is further up the creek.

Q. All right, where do you mean?

A. About here somewhere (indicating).

Q. Up along the words "U. S."?

A. Yes.

Q. Below the word "patent"?

A. Yes, somewhere in there.

Q. Then I understand you to say that the bedrock dips down at that point to the southeastward?

A. Yes, sir.

Q. This way (indicating)?

A. Yes it has that appearance.

Q. And it goes below the river of course then?

Testimony of Thomas B. Early.

A. Well I could not get any further than the water.

Q. And from that point up approximately under the words "U. S." and perhaps "U.S.Patent"?

A. Yes, sir.

Q. Then going up the Nespelem the bedrock on the north, this clay deposit you refer to appears to be below the river, does it not?

A. Well I don't know as it is below the river. I have never been down below the water level to see.

Q. You don't think it is above the river, do you?

A. Well it just comes here up to—right along on the water level.

Q. If it dips it don't stay at the water level, it must dip under?

A. Yes, sir.

Q. Then it goes down below the river, doesn't it?

A. Yes, sir.

Q. And your answer would be that east of this point under "U.S.Patent" there the bedrock would be below the river if it dips southeast?

Mr. BLAIR: I object to the form of the question as it does not call for what this witness knows or what it would be. I object to the question as it is not asking for testimony from this witness, but that it is simply argument.

Q. Don't you know?

A. Well—

Q. All right go ahead.

A. I don't know as it dips under the river. I don't know as it does.

Testimony of Thomas B. Early.

Q. If it dipped southeast it goes down lower than the river, doesn't it?

A. I don't know.

Q. You think it dips southeast then, do you?

A. It has that appearance.

Q. What would it indicate if it dipped southeasterly from this point under the words "U. S. Patent", if it continued that direction would it go below the river?

Mr. BLAIR: I object to that question as it asks for a matter of argument, it is entirely argument.

Q. What is your answer to that?

A. Well I think it would go below the river.

Q. The further east it went of course the further below the river it would go I suppose as a matter of geology, wouldn't it?

A. I suppose so.

Q. You said you panned the Peabody before its location?

A. Yes, sir.

Q. And got several particles of gold in your pans of dirt?

A. Yes, sir.

Q. And after locating you panned you say 4 or 5 hundred pans of dirt?

A. Yes, sir.

Q. Where did you pan the—we are talking about the Peabody now?

A. Well all over the bar.

Q. All over the bar?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. What do you call the bar?

A. Well the whole thing, the Wickman and Peabody placers.

Q. To the Columbia, the excluded strip?

A. Yes, sir.

Q. You panned that?

A. Yes, sir.

Q. Average good?

A. Average good.

Q. You said that you made up your mind then that it was pay gravel?

A. Yes, sir.

Q. What do you mean by pay gravel?

A. Well if it was handled properly it would pay with the amount of water and the advantages of being worked.

Q. You don't mean that you could pay it by panning it, do you?

A. No, sir.

Q. You would not undertake to make it pay by panning it down?

A. Well I don't, no sir.

Q. What?

A. No sir, I don't.

Q. Do you think you could make it pay by panning?

A. Well I don't know as to that?

Q. You have been up there pretty much for 8 years, haven't you?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. And you don't know yet whether you could make it pay by panning or not?

A. It would be slow work.

Q. What do you call gold that pays to pan?

A. Well where you get several colors of coarse gold.

Q. Several what?

A. Several particles of coarse gold you can make an estimate, a rough guess as to whether it would pay or not.

Q. You say you can make an estimate. I am not asking about an estimate. I am satisfied you can make an estimate, but I want to know how you figure that you can profitably?

A. Well where the gold is very rich, lots of gold to be taken out, a pan of gold every day is taken out of different places.

Q. What is that?

A. Where they take out several hundred dollars from a pan of gravel.

Q. You consider that profitable?

A. I think it would be big pay with a pan.

Q. Where you can take out several hundred dollars a day or a pan?

A. Well they get it in a pan.

Q. In a pan?

A. In a pan.

Q. In a placer?

A. Yes, sir.

Q. Well that is your idea of what would be a reason-

Testimony of Thomas B. Early.

able and fair definition for pay gravel,—that which will take out several hundred dollars a pan?

A. Oh well, extraordinary.

Q. What does that show?

A. Extraordinarily rich ground.

Q. What do you mean about several hundred dollars a pan, if you don't mean that?

A. Well you asked me the question whether if I could make it pay by panning.

Q. What is that?

A. You asked if I could make it pay by panning?

Q. Now I ask you how much you figure you could pan with profit—what do you consider profitable panning?

A. Where you prospect with a pan and get several colors of coarse gold in different places all over the ground.

Q. You think you could make it pay with that, do you?

A. I think I could.

Q. What is that?

A. With proper appliances to work.

Q. With proper appliances to work?

A. Yes, sir.

Q. What are those appliances?

A. Well with water, large body of water.

Q. How would you use the water?

A. Well with the sluices and so on.

Q. What do you mean by so on?

Testimony of Thomas B. Early.

A. In the first place you pan and find out if there is gold there.

Q. I thought you said that you didn't—you might at least, after having good water you might make it pay to pan this gold.

A. I didn't intend any such thing.

Q. You didn't intend that?

A. No, sir.

Q. Then to understand it,—you don't think that by hand panning you could make this claim pay for gold?

A. I don't know as I could.

Q. What?

A. I don't know.

Mr. BLAIR: I object to the question as absolutely immaterial.

Mr. AVERY: Well I think it is quite material.

Q. How many colors of those small—where you refer to small particles of gold; how many of these colors do it take to make a cent, do you know?

A. No sir, I don't know. I could not say.

Q. Well then when you stated "pay gravel" you didn't have reference to panning by hand?

A. No, sir.

Q. You said when you were panning up there that the claim would pay. That is what you answered in one of the your direct examination questions.

A. Yes, sir.

Q. How long had you been there—when was the last time you panned there?

Testimony of Thomas B. Early.

A. The last time I panned there was last year some time.

Q. Well, were you panning up to that time to see whether it would pay?

A. No, sir.

Q. Did you save any of these colors that you have been describing?

A. Yes I saved some of them, a great many of them.

Q. What is that?

A. Saved some of them.

Q. I suppose ordinarily they were not saved were they?

A. Well I don't know whether the Dr. has some of them now or not.

Q. I am talking about your panning.

A. Well that is what I panned, my own panning,—that is you mean the last panning?

Q. No I don't mean the last panning?

A. No, not the first panning.

Q. I mean they were not saved prior to the commencement of this suit, I will say?

A. Well yes, once in a while we saved some.

Q. I hardly think that will answer my question.

A. Well we saved some of the larger.

Q. What is that.

A. I saved some of the larger particles.

Q. But ordinarily they were not saved, were they, generally?

A. Well generally—

Testimony of Thomas B. Early.

Mr. BLAIR: I object to the question as having been answered.

Q. Is that right?

A. Well when we would wash a pan of dirt and count our colors we would throw it back in the creek. It is true we didn't intend to save them, we would look at it and count it.

Q. Did you say that you made a foundation for a power plant up there?

A. Yes, sir.

Q. Will you look at exhibit 4 and show where that was made, Mr. Early?

A. Well I think it is above here—no it is not there; I don't think. Well let's see.

Q. Look it over and then I will ask you the question. I will ask the question and then look it over there and answer it. Is it east or west of the east line of the Peabody, the power location—the power plant that you referred to—east or west of the east end line of the Peabody?

A. You mean the excavation for the power plant?

Q. You referred to a power plant—an excavation?

A. Yes, well I think the power plant is at corner No. 1. I think it is right in here (indicating).

Q. Well now that would be on this map about an inch and a quarter or a half west of the end line?

A. About.

Q. You put your finger about an inch and a quarter or an inch and a half?

Testimony of Thomas B. Early.

A. Somewhere in there, now the distance I could not say.

Q. Well can you tell in feet what it is?

A. Sir?

Q. Could you tell in feet—let me ask you this question, is it east or west?

A. It is west.

Q. West of the east end line of the Peabody?

A. Yes, sir.

Q. Now about how many feet west is it, Mr. Early?

A. Well I should think it was somewhere 250 or 300 feet.

Q. Now is it on the north or south side of the river?

A. It is on the north side.

Q. It is on the north side?

A. Yes, sir.

Q. How far from the river is it?

A. Oh it is just above, it is on the bank of the river.

Q. There is nothing there but an excavation I understand you to say?

A. Yes, sir.

Q. About 25x30 feet?

A. Yes, sir.

Q. Is it in the rock or soil there?

A. It is in rock.

Q. How deep in the excavation?

A. Well on the upper side I should think 10 or 15 feet.

Q. And runs down?—comes down to no edge at all?

Testimony of Thomas B. Early.

A. We had to take off considerable of the lower side of it.

Q. How deep from the rim of the surface is it on the lower side which I suppose is on the south side?

A. It would be on the south side?

A. Oh—

Q. One or two feet or more?

A. Well probably one foot.

Q. One foot?

A. Yes, sir.

Q. Now will you state where the dam is with respect to that excavation for a power house?

A. Well the dam is back up in here (indicating).

Q. You have placed your finger on the east of the east line of the Peabody?

A. Yes, sir.

Q. Is the dam east of the east line of the Peabody?

A. Well it would be a little south of the line, right there.

Q. I mean more particularly, it is not on the Peabody claim, the dam is not?

A. No, sir.

Q. When was that built, that foundation?

A. Well last spring.

Q. Last spring?

A. Yes, last summer, that is.

Q. After the government commenced—you knew the government was investigating this case?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. Did I understand you to say that you cut out a flume or something like a flume?

A. Yes sir, we cut out a flume bed.

Q. At the same time, or both about the same time?

A. Well we cut out the flume bed before.

Q. When did you cut that out?

A. That was a year ago last winter—it was during the winter of 1907 and 1908.

Q. That was after you knew the government was investigating this case?

A. No that was before.

Q. I mean not when the suit was started, but when the government was investigating the claim in 1906?

A. I think it was before the suit was started.

Q. Oh yes, but I mean which was it—you knew that the government was investigating this, the validity of the patent?

A. No sir, I think that work was done before.

Q. You knew when they were up there camping on the claim, didn't you and sampling it, Mr. Collier and Mr. Goodwin?

A. I knew after they had gone.

Q. You knew immediately after they had gone, within a week or so?

A. I don't know—well I heard that they were there and that is all I know about it.

Q. What?

A. I heard there was such a party there, but that is all I knew about it.

Testimony of Thomas B. Early.

Q. You talked it over with the officers that were there investigating the claim, didn't you?

A. I don't remember.

Q. You knew they were there—you knew within a few weeks after they were there, didn't you?

A. I heard they were there, yes sir.

Q. Now indicate if you can where the flume was? Tell us the shape and where the flume bed was?

A. It is right in there, a solid cliff of rocks.

Q. Running over?

A. Running from the dam down to—well to the power plant, that is, to go down there.

Q. How long was it?

A. Never went through with this, never went through the rocks with it, went as far as I could, but didn't get through.

Q. But didn't get through with it?

A. Clear through?

Q. Yes?

A. Already to put in the flume whenever we were ready.

Q. Did it go through the rocks?

A. Sir?

Q. A kind of a channel like was it?

A. No it was in the side of the cliff, cut right out 5 feet wide for a flume bed.

Q. And that was down about 18 inches cut?

A. Yes, sir.

Q. And was done sometime a year ago last winter?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. Do you remember what time of the year it was? Was it before January or after January of that winter?

A. I think we commenced before January.

Q. Now you said it was for the purpose of erecting a saw mill, this power location?

A. Yes sir, in the first place.

Q. What is that?

A. Yes, sir.

Q. You said in the first place—did that mean anything? We have put that in the original location, and being a good location for a saw mill?

A. Well, yes, to cut lumber for ourselves, for the company.

Q. Did you use any timber up in the mines?

A. Yes, sir.

Q. In the quartz mines?

A. Yes, sir.

Q. And it would be a good place to get timber for that, would it?

A. No, sir.

Q. What?

A. No, sir.

Q. You didn't figure on cutting any timber for these mines in the saw mill?

A. No, sir.

Q. How much lumber would it require to put that flume in?

A. Well I don't know.

Q. What flume do you mean when you say you don't know?

Testimony of Thomas B. Early.

A. Well I mean the whole flume, clear through.

Q. For what purpose?

A. To take the water out.

Q. For what—hydraulicking?

A. For hydraulicking, etc., yes sir.

Q. Well I think you said you had not decided on whether you would put in a flume or an iron pipe.

A. Well we hadn't decided.

Q. Well what did you do about the saw mill—arrange to build a saw mill for?

A. Well, that was the intention when we located the power plant there.

Q. When you located the power plant was to what?

A. Was to saw lumber for a flume.

Q. Then you had decided at that time that you would have a flume?

A. Yes, sir.

Q. That is the first time you had decided?

A. Yes, sir.

Q. What do you use in your quartz mines?

A. Stulls and cribbing and lagging.

Q. Any of it have to be sawed?

A. No, sir.

Q. How much lumber would it take to put in this flume that you speak of?

A. Well I don't know.

Q. Well didn't you estimate it at all?

A. No I didn't estimate it.

Q. You were superintendent up there, weren't you?

Testimony of Thomas B. Early.

A. Yes sir, but the engineer who surveyed it and everything of that kind, he made an estimate I think.

Q. You don't know anything about what that was?

A. No.

Q. What?

A. No sir I don't.

Q. And you were putting in this power plant foundation without knowing the amount of lumber that it was going to take?

A. Yes sir. He made the estimate and turned it over to Dr. Hudnutt, the manager of the company and I didn't inquire in regard to it at all.

Q. What kind of lumber or timber was this flume bed to be made of?

Mr. BLAIR: I object to that as immaterial.

A. Well I don't know.

Q. You mean to say you don't know what kind of lumber it was to be made of?

A. Yes, sir.

Q. You don't know anything about the size of the lumber?

A. No, sir.

Q. You don't know how long the flume was to be when you decided that you would put in a flume?

A. Well that part of it up there I think was 300 and some odd feet.

Q. 300 and some odd feet?

A. 300 and a fraction.

Q. You mean by that it took—that was the length

Testimony of Thomas B. Early.

of the flume that you were considering—that it was decided to put in when you made the foundation?

A. Yes, sir.

Q. How thick were the planks that they put in the flume?

A. An inch and a quarter we used to put in in Colorado.

Q. An inch and a quarter?

A. Yes, sir.

Q. How wide are they?

A. I think 12 inches wide.

Q. How long?

A. Well I don't know, I don't remember.

Q. Don't you know that, Mr. Early?

A. No sir I don't remember how long they were.

Q. What is the topography of the surface there on the north side of this proposed saw mill, that is where it runs up, up the bank, isn't it?

A. The saw mill was to be down, way down below the cabin.

Q. The saw mill was to be below the cabin?

A. Below the cabin on the Peabody placer.

Q. Then this power plant was not to join the saw mill?

A. It was to furnish power for the saw mill.

Q. What kind of power?

A. Electric power.

Q. What kind of an electric plant were you going to put in, do you know?

A. No, sir.

Testimony of Thomas B. Early.

Q. Do you know how much power you were going to generate?

A. Well, the engineer said about 250 horsepower.

Q. About 250 horsepower?

A. Yes, sir.

Q. That is, the mill that you would put in there would generate that much—you don't know whether it was the biggest or smallest mill, do you?

A. No, sir.

Q. Then were you going to conduct it—

A. Down to where?

Q. Below the cabin—below the cabin to work the saw mill here?

A. That would be—

Q. Do you know how that is done—is that done by wire transmission?

A. Yes, it is done by wire transmission.

Q. You didn't lay out any foundation for the saw mill itself?

A. No, sir.

Q. You didn't mark out on the ground any place for the saw mill itself?

A. Well looked the ground over a little. We had two or three points where we could set it.

Q. Had you decided on a point?

A. Well no sir.

Q. Mr. Early you spoke of the requisites necessary for hydraulic mining, first the amount of water and then the dumpage for tailings, a place for tailings, and third the fall of the water.

Testimony of Thomas B. Early.

A. Yes, sir.

Q. Where did you think you would put the dump on the claims, I refer now to the whole business, the dump from both of them?

A. Well we could dump in the Nespelem River.

Q. Whereabouts?

A. Anywhere along above the mouth of the river.

Q. Just throw it right in the river anywhere from the mouth up as far as you could go?

A. No, up as far as the cabin.

Q. Where else?

A. Well throw it into the Columbia River.

Q. What is that?

A. In the Columbia River down on the lower area, down along the river.

Q. You mean at what point?

A. Down in here (indicating).

Q. Down at the west end of the Peabody claim?

A. Yes, sir.

Q. And did you expect to dump any along the excluded strip itself?

A. We did when it was located.

Q. Now let's go to the Peabody a minute. How many holes did you dig and prospect in on the Peabody and where were they?

A. Well, they were scattered all around through here.

Q. Well did you dig a discovery hole up there?

A. Yes, sir.

Q. How deep down did you go?

A. I think that was 11 feet.

Testimony of Thomas B. Early.

Q. 11 feet?

A. Yes, sir.

Q. Did you go to gravel?

A. We got a little gravel in that discovery hole.

Q. Well did you think you got to the gravel bed?

A. Well I think we have got on to it.

Q. Did you find any colors there?

A. Yes, sir.

Q. Where did you dig another hole in the Peabody?

A. Now let's see—they were scattered all along through here, there were several. I don't remember now just how many.

Q. Well you are running your finger then in pointing, indicating from the discovery hole last mentioned away southerly and then turning off towards corner No. 7 isn't that right?

A. Yes sir. Well it was somewhere up in here.

Q. Let's dispose of that first. About how many did you dig along that general line that I have indicated?

A. I think it was 5 or 6 along in there.

Q. What were the deepest?

A. Run all the way from 10—oh 10 or 11 to 12 feet and some of them 15 feet.

Q. Did you strike gravel in nearly all of them?

A. No, sir.

Q. Which ones did you strike gravel in?

A. Struck gravel in—I think it was all but two.

Q. All but two of them—except two you struck the top of the gravel bed, did you?

A. Yes, I think so.

Testimony of Thomas B. Early.

Q. Now you started a moment ago to tell us what other holes you sunk along on there?

A. Well there was some along up here (indicating).

Q. Well, you mean about in the middle of the claim and in a line with the north line of the claim about half way.

A. What?

Q. You indicate that you dug some holes about half way between the word "placer" and the northerly line of the Wickman?

A. Yes, sir.

Q. Along in here?

A. Yes along in there.

Q. How many holes did you dig there, about in that position?

A. I don't remember.

Q. Well did you dig a couple?

A. Oh yes,—yes even more.

Q. Well you dug a hole on every 20 acres anyway, didn't you?

A. Yes, the holes exceeded that.

Q. Now in nearly all of those holes did you find any colors?

A. Yes, sir.

Q. In all of them?

A. No, some we didn't, we struck gravel in one or two.

Q. How deep were those holes?

A. Some of them were 10 feet and others 12, 11 to 12 feet in depth.

Testimony of Thomas B. Early.

Q. Did you go up this way any further?

A. Let's see—

Q. Did you dig any holes up towards corner two or the Peabody?

A. Is that going up the hill—that is going up the hill?

Q. The holes generally that you dug on the Peabody—see if I am right—ranged from the discovery, ranged south and east to corner No. 7?

A. Yes, sir.

Q. And at a point generally between the words “placer” and the north line of the claim?

A. Yes, along in there.

Q. Was the formation approximately alike in each hole? that is substantially alike?

A. Well yes.

Q. The geological formation, the dirt and stuff, and the gravel.

A. Yes, sir.

Q. About the same?

A. Yes, sand and gravel.

Q. And I suppose the gravel was deeper in the Wickman, wasn't it—or rather the dirt was deeper, sand as you call it.

A. In the discovery on the Wickman we got gravel near from the surface.

Q. You said that—you stated among the methods by which you would—in hydraulicking the Wickman—deposit the tailings, you would pile it on the level ground on the Wickman?

Testimony of Thomas B. Early.

A. Yes, there was a place there.

Q. About what part did you figure it could be piled on?

A. Well down close to the river.

Q. Down close to the river, about where—all along there, the edge of the river of the north side, I mean the Nespelem river of course.

A. Well there is flats there and we had to start in with the level bank above the flats.

Q. What is that?

A. There is flats that that we could dump on if we wished to.

Q. Is that one of the ways in which it would be done then?

A. Well, I don't know.

Q. You made that mention as being a way of depositing it?

A. That would be one way, if you could not dump it it the river.

Q. Where would you dump, can you indicate it?

A. No I can not.

Q. All along the river on the north side?

A. Not all along, no sir; for quite a distance there.

Q. A distance there where?

A. Along the stream, just above the stream, just above the stream in some place, there is a little wide place there.

Q. You refer to the part of the river between corner 7 and the mouth?

A. Yes, sir.

Testimony of Thomas B. Early.

Q. What is the character of the bluffs or hills that lie along the Wickman placer and to the northeast of it?

A. Well it is kind of a granite formation, rock, along the Wickman placer.

Q. It is not mineral rock, is it, along there?

A. It is mineral bearing; there is some claims along there.

Q. It is mineral bearing rock?

A. There are several claims up on those bluffs there.

Q. Are there any other placer claims around that country?

A. Well not close by that I know of.

Q. How close?

A. Oh I guess there is one down the river on the opposite side of the river is the nearest one that has been worked that I know of.

Q. The opposite side of the Columbia?

A. Yes, and then one up the river.

Q. On the other side?

A. On the other side, yes sir.

Q. Then there is mineral bearing rock on the other side of the Columbia, is there?

A. Not that I know of.

Q. You don't know of claims up there?

A. I mean the Indians had worked the placers, there, that is all I know.

Mr. AVERY: That is all.

By Mr. BLAIR:

Q. Mr. Early, in this sluice boxing you say you did, did you find any gold?

Testimony of Thomas B. Early.

A. Yes, sir.

Q. With reference to this clearing done by Bordeaux, did you state that you knew of that or didn't know of that?

Mr. AVERY: I object to that as immaterial.

Mr. BLAIR: I just want to find out if he stated he did or did not.

Mr. AVERY: He said that he knew of it.

Q. Anyway do you know of that, Mr. Early?

A. One day I went down there.

Q. Do you know the purpose for which it was cleared?

A. Sir?

Q. Do you know the purpose for which it was cleared?

A. Well I asked the Dr. afterwards.

Mr. AVERY: I object to what he asked the Dr.

Q. I don't know as the Dr. can testify to that or not.

A. The Dr. sent a man down there. I didn't know anything about it. It was about 4 miles from camp.

Q. I asked you whether you knew of your own knowledge.

A. No I did not.

Q. When did you say that this power plant, the foundation, was put in?

A. I think it was a year ago last winter we had been working on it?

Q. That is when?

A. Along this spring.

Mr. AVERY: You are referring to the foundation?

Mr. BLAIR: Yes, sir.

A. It was a year ago.

Testimony of Thomas B. Early.

Q. A year ago?

A. A year ago in April and May the foundation was laid.

Q. I am asking now, Mr. Early, with reference to the foundation to the power plant, not the foundation of the flume?

A. You mean the flume bed?

Q. No I mean—I want to know when it was that the power plant foundation was put in, not the foundation to the flume?

A. I don't know.

Q. But the 25x30 foundation, when was that put in, when was it built?

A. Built a year ago last April—a year ago last April or May.

Q. That would be in 1900 and—

A. '08.

Q. Mr. Early do you know of any attempt being made to cultivate these placers?

Mr. AVERY: I object to that as not being proper re-direct examination.

Q. I am asking you the question?

A. Yes, there is two or three places the ground has been plowed up there?

Q. Do you know with what results?

A. Didn't anything grow.

Q. With relation to the Conlon field—

A. Yes, sir.

Q. Has that been cultivated?

Testimony of Thomas B. Early.

Mr. AVERY: I object to that as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. Is that a somewhat similar ground upon these placers in places?

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. With what results?

Mr. AVERY: I make the same objection.

A. Well he seeded it last year but he didn't get a crop and moved away.

Q. Did you ever do any farming?

A. I was raised on a farm when I was a boy.

Q. Did you ever do any farming up here by irrigation?

A. No, sir.

Q. You stated in your cross examination, Mr. Early, in answer to the question of Mr. Avery—Mr. Avery asked whether the gold would not be on the bedrock. With reference to these two placers where did you find the gold, on the bedrock also?

Mr. AVERY: I object to that as having been gone over once or twice.

Mr. BLAIR: I want him to explain.

A. Found it from the surface down to bedrock, all the way down intermingled.

Q. You stated on cross examination in answer to a question of Mr. Avery that in operating these works that 8 to 30 feet of soil would have to be removed on

Testimony of Thomas B. Early.

the Wickman—did you mean before you struck the pay gravel?

Mr. AVERY: I object to that as leading the witness.

A. No, sir.

Q. What was your meaning with respect to that, Mr. Early?

Mr. Avery: I object to it, the meaning has been made perfectly apparent.

Q. Do you think you understand the question?

Mr. AVERY: I object to that as leading the witness.

A. I don't think I understand the question.

Q. What is the prospect with reference to gold being found on the bedrock or disseminated through the dirt?

Mr. AVERY: I object to that as leading.

A. It is disseminated.

Q. State whether or not it is part of your duty as superintendent of the company to plan for a system of hydraulic mining?

A. Yes, sir.

Q. State whether you have a technical knowledge of hydraulicking.

Mr. AVERY: I object to that. He has been asked generally about what his knowledge was and he has stated what it is and his technical knowledge is a conclusion. It is too general. He has already stated the facts.

Q. State whether or not you personally ever determined upon any plan for hydraulicking this property?

Mr. AVERY: I object to that as having been gone

Testimony of Thomas B. Early.

over. It is not redirect examination. It has been gone over and disposed of. The witness has already answered the question. It is leading, and tends to have the witness impeach himself.

(Question read)

A. Yes, sir.

Q. Beg pardon.

A. Yes, sir.

Q. What was that plan?

A. That hydraulicking would be the proper way to work it.

Q. State whether or not you know, Mr. Early, the reason why the property has not been worked more than it has?

Mr. AVERY: I object to that. It is not redirect examination.

Mr. BLAIR: Oh yes it is.

A. Well, for the want of funds.

Q. State whether or not as to the fact with reference to the ability of the company to maintain its force of workers?

Mr. AVERY: I object to the preceding question and the last question on the ground that it is not based on a fact and it is concerning something about which the witness has not shown himself qualified or competent to answer the question and it is incompetent anyway and immaterial.

A. The force was reduced several times for the want of funds, I know, to go ahead with the work.

Testimony of Thomas B. Early.

Q. Do you know the size of the flume that you had in the Gold Run placer operations?

Mr. AVERY: I object to that as immaterial.

Q. Do you know the size, say yes or no, do you know approximately the size?

A. Yes, sir.

Q. About what size?

Mr. AVERY: I object to that as immaterial.

A. Four feet on the bottom.

Q. What?

A. Four feet on the bottom.

Q. Did you work with a giant?

Mr. AVERY: I object to that as immaterial.

A. Yes they worked it with giants.

Q. Do you know whether it would be possible to work the Nespelem placers in the same way?

Mr. AVERY: I object to that as not redirect examination.

A. Yes, sir.

Q. What size hose did you use in your giant at the Gold Run?

Mr. AVERY: I object to that as immaterial.

A. An 8 inch hose.

Q. State whether you could use that same size here?

Mr. AVERY: I object to that as not redirect examination.

A. Yes, could use the same size here.

Q. State whether or not, do you know the fact that various sizes are used?

Mr. AVERY: I object as leading the witness.

Testimony of Thomas B. Early.

A. Yes, sir.

Q. State whether or not you know whether different sizes would be usable upon this property?

Mr. AVERY: I object as it calls for his conclusion and he has not shown himself competent to answer or qualified in reference to saying anything about it, and move to strike for that reason.

Q. State whether or not it is necessary to have any particular sized hose for use in placer mining?

Mr. AVERY: I make the same objection.

A. No, sir.

Q. Mr. Early, did you ever see a miner or prospector that didn't carry a magnifying glass?

A. No sir, I never saw one who didn't have a glass.

Q. They are used customarily in placer mining?

Mr. AVERY: I object to that as leading.

Q. Are they not.

A. I don't understand you.

Q. State whether or not they are used customarily by miners in placer mining?

A. Yes, and quartz mining too.

Q. Mr. Early, can you fix the power plant, approximately, the foundations there with relation to the ditch called improvement 3 on the Peabody placer, as it seems, to touch the Nespelem River near corner No. 1?

A. I will try as near as—you mean that foundation.

Q. The foundation of the—

A. Well the foundation.

Q. Now just one second,—with relation to whether it is north or south of the ditch.

Testimony of Thomas B. Early.

A. The foundation?

Q. The foundation, yes sir.

A. The foundation is south, right along the ditch, the ditch passes right above it.

Q. And approximately how far is it from the place where upon complainant's exhibit No. 4 Improvement No. 3 ditch seems to touch the Nespelem River—having reference now to the Peabody placer?

A. Well it touches the river right in here (indicating), at this point right here.

Q. I ask you where it touches the ditch and where with reference to that point?

A. Where did this touch?

Q. Is this foundation located above or below?

A. It is located below.

Q. Below?

A. Located below, in about here (indicating) I should judge.

Q. How far below, that point would you say approximately?

A. Well about 150 or 200 feet.

Q. Do you know whether it is one or the other?

A. No I don't. I measured it once or twice so we would know where to go.

RECROSS EXAMINATION.

By Mr. AVERY:

Q. What month was it that you worked the sluice boxes last year?

A. I think it was along in the latter part of April.

Q. How much gold did you find?

Testimony of Thomas B. Early.

A. Well we found several, a great many colors in the black sand.

Q. Did you use Hungarian riffles in it?

A. No, sir.

Q. What kind of riffles did you use?

A. Block riffles, that is, flat riffles.

Q. How deep was the boxes, I don't mean the length, you have stated that as 14 feet?

A. I think it was about a foot wide.

Q. A foot wide?

A. Yes, sir.

Q. Where did you get the dirt from?

A. Along the Nespelem Creek.

Q. Along the bank of the river?

A. Yes, sir.

Q. Do you know how many colors you found in the black sand?

A. Well there was one little run that time that we counted 27 colors.

Q. You saved them did you?

A. Some of them we did, yes sir, that is, I saved them in a bottle, put them in a bottle.

Q. What is that?

A. Saved them and put them in a bottle, the black sand.

Q. You haven't got them now with you?

A. No sir, not here, I gave them to the Dr. the manager of the company.

Q. It had not been worked since 1901 with sluice boxes?

Testimony of Thomas B. Early.

A. No, water carried it away, the high water. I don't know.

Q. When did it carry it away?

A. That spring—I don't know. There may have been a new digging done this spring. I have not been through there.

Q. What is that, a one-room cabin?

A. Yes, sir.

Q. Who resided in it?

A. I lived there part of the time.

Q. When did you live there?

A. I lived there last spring?

Q. Anyone else ever live there?

A. Yes, sir.

Q. Who?

A. Why our men lived there, the men that was working there.

Q. When they was working the sluice boxes there?

A. Yes, sir.

Q. Was there anyone else ever lived there?

A. All the men that were working down in that part of the country stayed in the cabin and lived there.

Q. All of the men—there were men living there who didn't work on the property, was there?

A. No, sir.

Q. Did Bordeaux live there?

A. Yes, sir.

Q. How long did he live there?

A. Oh, he has been there off and on two or three years, 3 years.

Testimony of Thomas B. Early.

Q. Lived there most of the time?

A. Well the biggest portion of the time.

Q. Is he a married man?

A. No, sir.

Q. This foundation that you have once or twice mentioned, that is simply an excavation is it?

A. Yes, sir.

Q. It is not any more than an excavation?

A. An excavation that is all.

Q. Where did you say the ground was plowed up in two or three places?

A. Well right here on the lower end of the Wickman placer.

Q. On the lower end of the Wickman placer?

A. Yes, sir.

Q. What was it plowed up for?

A. Some boys located it.

Q. When was it located?

A. Oh it is several years ago. I don't know just now.

Q. Since you got the patent?

A. Before that.

Q. Before you made your location, however, long before that?

A. Oh yes, several years ago.

Q. They didn't have any water on it, did they?

A. No, sir.

Q. You don't know what that ground would do with water, do you?

A. No, sir.

Testimony of Thomas B. Early.

Q. There was not any water on the Condon place is there?

A. No, sir.

Q. Was the plowed spots all on the Wickman or was some of them on the Peabody?

A. Well they were, there was some on the Wickman and some on the Peabody both, right in here (indicating).

Q. What kind of a crop was there on the Condon field, what was the character of it?

A. I think it was corn that he planted.

Q. It came up, didn't it?

A. It came up, yes sir.

Q. And died from want of water?

Mr. BLAIR: The witness didn't testify to anything like that.

A. I don't know.

Q. You don't know whether it died from want of water or not?

A. No, sir.

Q. How many acres did he plow or prepare?

A. I could not say, I don't know.

Q. They cultivated the Condon field, did they?

A. That is what they have on there now.

Q. That is the same character of land you say as makes up the Wickman and Peabody?

A. Yes, sir.

Q. Did you ever pan it, up in there?

A. No, sir.

Testimony of Thomas B. Early.

Q. What did you say about being gold from the surface to bedrock on these claims?

A. Well wherever there is gravel close to the surface you get gold.

Q. Well you don't get gold until you get gravel, do you?

A. Sometimes get fine gold, yes sir.

Q. I mean particularly on these claims?

A. Well yes you get a little fine gold.

Q. It is not gold that you can preserve is it?

A. Well if you want to take pains enough with it you might.

Q. Then you mean to say that above the gravel that you cannot secure the gold?

A. Yes, there is gold all the way.

Q. Above the gravel it is simply fine gold, only colors, isn't it?

A. Yes, fine gold.

Q. And you could not work that profitably without going to bedrock, could you?

A. Well it is all disseminated through there, you could work it, have to wash it off.

Q. Have to wash what off?

A. This top stuff, wash it in the sluice boxes just the same.

Q. You figured on going to bedrock, didn't you, or the clay?

A. No, sir.

Q. But you necessarily figured on taking the whole bank right down, that is what I mean?

Testimony of Thomas B. Early.

A. Yes, sir.

Q. Your idea was in planning to take it all off down to bedrock?

A. Yes, sir.

Q. You don't have any idea that you could accomplish any profitable work without you did that?

A. No, sir.

Q. How many other claims are the Multnomah people working up there, quartz claims?

A. Well I think there is 18 or 19 claims. I don't know just to say the number.

Q. They are doing assessment work on them?

A. Some of them they do assessment work on and others they work right along.

Q. They are distributed over three miles, and how far away?

A. Oh I guess about 4 miles.

Q. 3 or 4 miles?

A. Yes, sir.

Q. Didn't I understand you that some of them were further away than that?

A. Well yes there is one group that is about 4 miles from our camp, what we call home camp, three miles up the river.

Q. The home camp is 3 miles from the river?

A. Yes sir,—that would be four you would have to go, making it 7 miles.

Q. Where you had to reduce the force, the force was reduced on the quartz claims, wasn't it?

Testimony of Thomas B. Early.

A. Yes sir, reduced on the quartz claims, and all work.

Q. They were not doing any work on these placers then, were they?

A. Yes at that time they were.

Q. What were they doing?

A. Well we were building that—we had people one time cleaning and running that flume bed through there, had two men and had to lay one off.

Q. Had two men on the flume bed and laid one of them off?

A. Yes, sir.

Q. But that flume bed was for the purpose of making an electric light plant?

Mr. BLAIR: I object to the insinuation. There has been no testimony of any kind about an electric light plant.

Q. Well electric plant then. That work that they were doing was for this electric plant?

A. Yes, the power plant.

Q. That is the only work that they have taken any men off from isn't it?

A. Oh no, they stopped all the work.

Q. Do you refer to these two claims?

A. Yes, sir.

Q. The only thing that they done there, taking men off of these two placers is when they took one of them off of the foundation for the electric plant.

A. Well that one time,—I think they quit work down

Testimony of Thomas B. Early.

there two or three times off and on afterwards, for the want of funds.

Q. Where were they working when they quit work there for want of funds on these claims?

A. One time I think on this ditch that runs through there.

Q. That was before you got your patent, wasn't it?

A. Yes, sir.

Q. Well, how many men did you take off then?

A. Well I don't remember the number now.

Q. Well, how many men were working on the the ditch?

A. Oh had 6 or 7 there.

Q. That ditch all went towards the making of the amount which was necessary to get the patent, didn't it?

A. Yes, sir.

Q. And you hadn't laid off any men except the one man off from the foundation for the power plant since the patent was issued, have you, as far as these claims are concerned?

A. Well I think that is all.

Q. Do you know how much money they have spent in developing the quartz claims?

A. No sir, I do not.

Q. Do you know how much development has been done on these quartz claims, these 18 or 19 that you mentioned?

A. Well pretty near. They had one cross-cut tunnel in nearly a thousand feet of what is called Squaw Hump Mountain district, several shafts and small tunnels and cuts.

Testimony of Thomas B. Early.

Q. Did you tell the amount of tunneling that had been put in in lineal feet?

A. In the main tunnel?

Q. I mean in all, the 18 or 19 claims?

A. No, sir.

Q. Can you tell the amount of shafts that had been sunk in lineal feet altogether?

A. No, sir.

Q. Which claim has had the most work done on it on the quartz claims?

A. Well it is called the Multnomah group, that is where—

Q. That is done on several claims?

A. Yes, sir.

Q. That is all in Squaw Hump Mountain?

A. Yes, sir.

Q. That is where, with regards to the placer claims, how far?

A. Well it is about 3 miles.

Q. That is where the thousand feet of work has been done?

A. Yes, sir.

Q. And can you tell how many shafts, lineal feet of shafts have been sunk down on the group?

A. No sir, I cannot.

Q. How do you drill up there?

A. By hand.

Q. By hand?

A. Yes, sir.

Q. No power up there for drilling, is there?

Testimony of Thomas B. Early.

A. No, sir.

Q. Have you got power up there for anything?

A. No, sir.

Q. Could you use this power, if there was power down here on the Peabody, could you use it up there?

A. Yes, sir.

Q. Easily transmitted, would it be?

A. Well yes.

Q. By wire?

A. By wire, yes sir.

Q. When did they commence driving this thousand feet of tunnel on the Multnomah group on the quartz claims?

A. In 1902, I think, it might have been 1903, I don't remember.

Q. And how much does it cost to run that tunnel?

Mr. BLAIR: I object to the question on the ground that it is asking specifically with reference to this tunnel.

Mr. AVERY: Yes sir.

Q. Do you know?

A. No, sir.

Q. Are you a judge of such matters?

A. Yes, sir.

Q. Can you tell approximately how much it would cost a foot?

A. No I cannot because there was too many different things go in.

Q. And your answer would be the same in regard to

the shafts that were sunk—I believe you didn't know how much shafts were sunk, did you?

A. No sir. No I don't—no sir I could not tell.

Q. Counsel asked you if you could work these placers with a giant and you said that you could?

A. Yes, sir.

Q. How would you work them with a giant?

A. Carry the water down to the pit and turn on the giant, turn it loose.

Q. What is a pit?

A. That is the excavation you make for your flume bed and so on and wash the gravel out.

Q. Well did you have in mind ground sluicing or hydraulic mining when you said it could be worked with a giant?

A. In the first place it was ground sluicing was my idea.

Q. You don't know how much it would cost to put in a giant, do you?

A. No sir I do not.

Q. You would take a giant and commence down to the river there and clean off the bedrock?

A. Yes, sir.

Q. And carry it way to the upper ends of the claim?

A. Work it.

Q. Work up?

A. Work up from the river.

Q. Turn it all back?

A. Turn it all back, yes sir.

Q. Dump it down in the river?

A. Down in the river.

Testimony of Thomas B. Early.

Mr. AVERY: That is all.

By Mr. BLAIR:

Q. This Condon field, who owns that?

A. I believe it belongs to Mr. Condon.

Q. What is he, an Indian?

A. He is what they call a Half-breed, part Indian.

Q. Does he hold this as an allotment under the tribe?

Mr. AVERY: I object to that as not the best evidence and also immaterial.

A. Well he bought it. He traded some cayuses for it.

Mr. AVERY: I object to that as immaterial and not the best evidence.

Q. These tunnels you spoke about on the quartz claims, do you know the nature of the rock through which they are driven?

A. Yes, sir.

Q. What is it?

A. Granite and Pyrite and Porphyry.

Q. What is the size of the tunnel to which you testified in answer to Mr. Avery's question?

A. The size of it?

Q. Yes?

A. 5x7.

Q. That is the long dimension.

A. The size or length?

Q. What is the length—of course it has a length. I knew there was a third dimension somewhere?

A. The length is 978 or 9 feet long, nearly a thousand feet long.

Mr. BLAIR: That is all.

Testimony of F. O. Hudnutt.

Mr. AVERY: That is all.

Witness excused.

Testimony of F. O. Hudnutt.

Mr. F. O. HUDNUTT, a witness called on the part of the defendant was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. BLAIR:

Q. You have been sworn?

A. Yes, sir.

Q. Your name is Dr. F. O. Hudnutt, isn't it?

A. Yes, sir.

Q. What is your residence?

A. Nespelem I suppose, I am there most of the time.

Q. What is your age at the present time?

A. Sir?

Q. What is your age at the present time?

A. 55.

Q. 55?

A. Yes, sir.

Q. Where were you born, Doctor?

A. Niagara, Niagara County, New York.

Q. What is your profession?

A. Physician, that is until I began mining.

Q. Allopath or Homeopath?

Mr. AVERY: I object to that as immaterial.

A. Allopath. I studied under two schools, Allopath and Eclectic, both.

Q. What is your present occupation?

A. Mining.

Q. How long have you been engaged in mining?

Testimony of F. O. Hudnutt.

A. Well, I would have to differentiate perhaps between mining and prospecting.

Q. Including both?

A. '84 was the first.

Q. You have been prospecting and mining, is that what you mean?

A. Intermittently since that, and continuously during the last nine years—intermittently since that and continuously during the last nine years.

Q. Where did you do your first prospecting or mining?

A. I went in May of 1884 to Coeur d'Alene and then back here.

Q. What was the character—what did you do there?

A. Just prospecting for gold—prospecting for gold and that is what I was looking for at that time. I was only there a very few days.

Q. In 1884?

A. Yes, sir. I was only there a very few days.

Q. And what was your next experience in prospecting?

A. I came back to Spokane, and went on horse back up near Hunter's Creek.

Q. Up near Hunter's Creek?

A. Yes, sir.

Q. Where is that?

A. Well, it is connected with Camp Spokane, as it is called.

Q. Locate it with reference—?

Testimony of F. O. Hudnutt.

A. I should judge it was about 25 miles north of where the Spokane River empties into the Columbia River.

Q. Can you locate it with reference to the Nespelem River—where the Nespelem River flows into the Columbia River, approximately?

A. I should judge 75 to 90 miles north east.

Q. Were you alone at that time?

A. No, sir. I had a partner with me.

Q. What were you doing on the trip?

A. I was prospecting for anything and everything,—quartz and placer.

Q. Where did you go on that trip from Hunter Creek—was Hunter Creek the first point?

A. I made my first camp about 6 or 8 miles from the Columbia and I ranged in from there to what is now called Cedar Canyon down to the mouth of Hunter Creek.

Q. And what were you prospecting for at that time?

A. Well, when we went down to the river we was prospecting for placer gold and went up in the hills and we prospected for quartz.

Q. And did you do placer mining and prospecting on that trip?

A. Yes, sir.

Q. And to what extent—how long were you out on that trip—what year was that first?

A. That was in 1884.

Q. Commencing with the time that you were in Coeur d'Alene and then came back from Coeur d'Alene to Spokane and then went on horse back?

Testimony of F. O. Hudnutt.

A. I was there about two months, that is in the hills and down at the river.

Q. What river?

A. Columbia River.

Q. The Columbia River?

A. Yes, sir.

Q. And what did you find in the way of gold, if any?

Mr. AVERY: I object to that as immaterial.

A. I found fine flour gold up above and below the mouth of Hunter Creek and on the bars, the sand bar of the Columbia River.

Q. How did you find it?

A. By panning.

Q. By panning?

A. Yes, sir.

Q. Using ordinary gold pans?

A. Ordinary gold pans.

Q. Did you find any elsewhere than that place just mentioned?

Mr. AVERY: I object to that as immaterial.

A. No, sir.

Q. Did you pan at other places?

A. Not along the Columbia River excepting there. I panned along other places in gulches.

Q. What did you do in the way of prospecting or mining after that?

A. After I left there?

Q. Yes—When did you leave there?

A. I located a quartz claim up in the district which is since called Cedar Canyon and came down here and bond-

Testimony of F. O. Hudnutt.

ed it to Mr. Green of Portland and then I went back there and was put in manager of the mine to open it up.

Q. Where was this located—this mine?

A. It was located in what is now Cedar Canyon district.

Mr. AVERY: I object to that as immaterial.

Q. What?

A. Located in what is now the Cedar Canyon district.

Q. And what kind of a mine was it?

A. Copper and silver.

Q. After that experience, Doctor, what did you next do in point of mining prospecting?

A. I went and settled in California and in the spring I went to Eureka and from there I started out prospecting.

Q. From Eureka where?

A. From Eureka, California—I went from Eureka, California, and prospected up across—went entirely across the Siskiyou Range over to Klamath and up in there and across over to Waldo.

Q. Did you do any placer prospecting on that trip?

A. I prospected some for placer, yes, and I was looking mostly for quartz.

Q. How long was you on that trip?

A. Well, I kept on going until I reached Baker City, 600 or 800 miles. I was until the middle of June.

Q. Do you know what year?

A. That was the year 1885.

Q. And the next where did you go after that?

A. After the next I went from Baker City to a new

Testimony of F. O. Hudnutt.

camp called Cornacopia about 75 miles north of Baker City, over on a place called Pine Creek.

Q. What was the nature of that camp?

A. It was rich gold quartz. We discovered it then.

Q. Did you do any placer prospecting there?

Mr. AVERY: I object to that as immaterial.

A. They afterwards found rich placer.

Q. Did you do any placer prospecting at that time?

A. Sir?

Q. Did you do any placer prospecting at that time?

Mr. AVERY: I object to all this.

A. I did not.

Q. What—after leaving there where did you go—any other mining or prospecting?

A. I went back to Michigan to the store but I cannot remember what year I started prospecting again but I think it was about—

Q. Approximately?

A. About 18 years ago.

Q. About 1891?

A. 1891—18 or 20 years ago possibly.

Q. 1890 or 1891—since 1890?

A. Yes, sir.

Q. And where did you go the second time?

A. The next time I went to Okanogan, up on the Similkameen and to the border of British Columbia—to Similkameen and Okanogan.

Q. And what was the character of your experience there?

A. I prospected for quartz and for placer.

Testimony of F. O. Hudnutt.

Q. Gold?

A. Gold.

Q. Where did you prospect for gold?

Mr. AVERY: I object to that as immaterial.

A. I prospected for gold on the north side of the Simalkameen River and various places.

Q. Did you find any?

Mr. AVERY: I object to that as immaterial.

A. I found some, yes.

Q. During ordinary mining operations?

A. Yes, sir.

Q. Where does this Simalkameen River flow?

A. It flows from the west.

Q. Into what river?

A. Into—it flows into the Okanogan River.

Q. Into the Okanogan—please state where?

A. Yes, south of the Columbia.

Q. And how long were you mining or prospecting upon that trip—prospecting upon that trip?

A. Well, let's see—

Q. Approximately?

A. Well, three or four months possibly.

Q. And from thence where did you go?

A. I went and prospected on Bear Paw Mountains in Montana.

Q. Quartz?

A. Quartz and placer.

Q. In this placer mining did you use the ordinary pan?

A. Yes, sir.

Q. And from thence where did you go?

Testimony of F. O. Hudnutt.

A. I went down to Butte and from Butte to Logan and from Logan over into a camp on the Wasatch Range in Utah.

Q. Do any prospecting?

Mr. AVERY: I object to that as immaterial.

A. Prospected for quartz.

Q. And from thence where did you go?

A. To Cripple Creek in Colorado.

Q. And what did you do there in the way of prospecting?

A. I prospected for quartz.

Q. And how long were you there?

A. I was there several times but only a short time each time. It was practically all located when I was there.

Q. What year was this Cripple Creek trip?

A. I am not certain but I think it was 1893 or 4.

Q. And after leaving Cripple Creek where did you go?

A. I went up to Clear Creek from Denver.

Q. Where is Clear Creek?

A. Clear Creek is down there I think either in, I think in Boulder or Gilpin County in Colorado.

Q. What were you doing there?

A. I went there to locate a bar, bought out some parties on Clear Creek.

Q. In the creek?

A. Yes, sir.

Q. Gold placer?

A. Yes, sir.

Q. Did you do any panning?

A. Yes, sir.

Testimony of F. O. Hudnutt.

Q. Prospected there?

A. Yes, sir.

Q. And thence where did you go—how long were you there?

A. I was there that summer.

Q. And from thence?

A. From there I went over to Mount Blanco in Colorado and prospected for quartz.

Q. How long were you there?

A. I was there about two or three weeks.

Q. And thence where did you go?

A. From there I went up into Summit County and prospected.

Q. Where?

A. In Colorado.

Q. Any placer mining?

A. Yes, all over it.

Q. And from there?

A. From there I organized a prospecting company and in 1893 I went into Central Idaho.

Q. Into Central Idaho?

A. Yes, sir.

Q. About where?

A. Outfitted at Weiser and went south to Big Creek and up across to the Snake River where the Caswell Boys were and I was in Central Idaho there for a time and then went through and then came out at Boise and prospected for quartz and placer.

Q. How long were you in there, Doctor, on that trip?

Testimony of F. O. Hudnutt.

A. Went in there the first of July—went in there about the first of July and came out some time in September.

Q. Did you find any gold on that trip?

A. Oh, I saw some there.

Q. Did you do any panning?

A. Yes, sir.

Q. After that where did you go?

A. Organized a prospecting company and went up to the Nespelem.

Q. That was when?

A. In 1900.

Q. Were you alone when you went to Nespelem?

A. No, sir.

Q. Who was with you?

A. A man by the name of Feighen and Mr. Early.

Q. When you refer to Mr. Early you mean the gentleman who has testified?

A. Yes, sir, Thomas B. Early.

Q. When was this that you went there, did you say?

A. 1900.

Q. How did you go to Nespelem?

A. Went to Wilbur on the Washington Central from Spokane and outfitted—bought horses, provisions and pack saddles and everything necessary and tools, etc., and went to Stevenson's Ferry.

Q. Where is Stevenson's Ferry with relation to these Wickman and Peabody placers—how many miles is it?

A. Up the river about six miles.

Q. Up the river, you mean above on the river?

A. Above, yes, sir.

Q. Did you do any prospecting at any place on this trip?

A. I was kept by the rain and the fact that the Indians were not running the Ferry that day, for that day and the next I was kept camping on a bench above Stephenson's house and I took a gold pan and went up a little bit of a stream that came down there and panned it.

Q. You hadn't any idea of locating there?

A. Oh no.

Q. Why did you pan there?

A. I was prospecting and I wanted to see, they had panned—a lot of work done down below and I wanted to see how far up that gold went.

Q. Did you do any other examining for gold at Stevenson's Ferry there?

A. Simply walked over the ground that had been worked out.

Q. How is that?

A. Simply walked over the ground that had been worked out.

Q. Worked out where?

A. At Stevenson's bar—Stevenson's Ferry.

Q. How is that bar worked out—in what way do you mean?

A. Well—

Q. As a placer proposition you mean?

A. It has been about 10 or 15 acres they worked over and run down to the line—there is no difference in the soil particularly between this and the entire bar but it has been worked—it has been worked to a line about where the wagon road goes down to the Ferry and I

Testimony of F. O. Hudnutt.

should suppose perhaps about 10 or 15 acres worked over and cobblestones and gravel was all laid in windrows.

Q. Windows?

A. Rows and ditches.

Q. State whether or not you were informed as to the character of the work done there at that time?

Mr. AVERY: I object to that as heresay and immaterial.

Mr. BLAIR: I am not offering it to prove that fact but to prove the knowledge of this witness with reference to the gold deposits along there.

A. I talked with Mr. Stevenson about it and he told me that they were working there when he came in—he said he shipped out their gold.

Q. How far is that bar above the river—the Columbia River?

A. Well it would make a difference whether high water or low water.

Q. Well, at high water for instance?

A. Well, it is perhaps 60 feet.

Q. Low water?

A. At low water it is—

Q. At high water how much would it be?

A. Well, 30 or 40 feet perhaps.

At this point Court took a recess until 10:00 A. M.
July 21, 1909.

Spokane, Wash., July 21, 1909.

10 o'clock A. M.

Hearing continued pursuant to adjournment, all parties present.

Testimony of F. O. Hudnutt.

DR. F. O. HUDNUTT, recalled for further examination.

DIRECT EXAMINATION (Cont.)

By Mr. BLAIR:

Q. Dr. Hudnutt, are you familiar with the Peabody and Wickman placers?

A. Yes, sir.

Q. Their location?

A. Yes, sir.

Q. The ground enclosed?

A. Yes, sir.

Q. State when you first saw them?

A. I passed through them about the middle of April.

Q. What year?

A. 1900.

Q. 1900?

A. 1900.

Q. Can you state when their placer possibilities were first called to your attention?

A. When going over this bar I called the attention of Mr. Early and Mr. Feighner to the fact that there was gold there.

Mr. AVERY: I object to that as being incompetent, a self-serving declaration and immaterial.

Q. At what time was this?

A. That was going up the river from where we crossed at the ferry below.

Q. The first trip?

A. Yes, sir, the first time I was in the Collville reservation.

Testimony of F. O. Hudnutt.

Q. When did you next go upon the property?

A. I believe it was about July or August in 1900. I am not certain.

Q. Had they been located at that time?

A. There were parties who had staked on it.

Q. How is that?

A. There were parties who had staked on it at that time, yes, sir.

Q. They were not your location stakes?

A. No, they were other parties.

Q. Were those stakes on there when you went there the first time?

A. There were stakes on there at the time that I was down there. I cannot state how many times I was down on the placers that summer.

Q. And these stakes were—?

A. They were placer locations.

Q. And were they upon the property included in the locations?

A. Yes, sir.

Q. Do you know who located these?

Mr. AVERY: I object to that as immaterial.

A. I could not recollect it—I just saw that they were located and I didn't know those—I could not testify to it as I don't know who they were.

Q. Did you ever do any panning upon that property?

A. I don't remember that I did any panning on it that year, no, sir.

Q. I am just speaking generally—did you ever do any panning?

Testimony of F. O. Hudnutt.

A. Oh, yes.

Q. And can you recall when your first panning was done?

A. It was in the year 1901 I think, soon after, just a very short time after Mr. Early located it, that was the Peabody placer.

Q. And where did you pan at that time?

A. I didn't do much panning—down at the mouth of the Nespelem is about the only place that I panned.

Q. You panned with the ordinary pan?

A. Ordinary gold pan.

Q. And with what results?

A. Why we found gold there in the pans, nearly every pan.

Q. You say "We found gold"?

A. Mr. Early was down there and showed me the stakes—showed me the boundaries of the claim.

Q. Had the Peabody placer been located at that time?

A. What is that?

Q. Had the Peabody placer been located at that time?

A. Yes, sir.

Q. Do you know the territory included within the Peabody at that time?

A. Why, at that time.

Q. Do you know it?

A. What is that?

Q. Do you know the territory included in the Peabody at that time?

A. Why the stakes as he had them there covered practically all of the bar—all of the bar from the corner

Testimony of F. O. Hudnutt.

trees, I think it was, or near the corner trees, north corners.

Q. The corner trees do not appear now?

A. Well, I was speaking about the trees that were there, that is all, was in a gulch about the middle or center, to the southwest corner.

Q. What gulch, there are several?

A. The gulch that practically bounds the Wickman west, and the lower stake was way down towards the Columbia.

Q. Looking at complainant's exhibit No. 4 will you state whether or not it included this excluded strip along the Columbia?

A. It went over to this corner, yes, sir.

Q. Just state yes or no.

A. Yes, sir.

Q. And on west of the Wickman placer where was the end line of the Peabody?

A. It reached about that gulch.

Q. Where is the gulch situated with relation to the western line of the—this western end line, the short end line of the Wickman?

A. Sir?

Q. Where is that gulch situated with relation to the Wickman placer?

A. Well it is—borders, you might say, on the west end of the Wickman placer.

Q. Do you know when the Wickman placer was located,—that is the Wickman alone?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as it is included in the record and it is not the best evidence.

A. Why I think it was in June sometime in 1902.

Q. Do you know how many men located the Wickman?

A. 5.

Q. Do you know the territory included within the Wickman on this original location?

A. Yes, sir.

Q. You look at defendant's exhibit C?

Mr. AVERY: I object to that as having been answered.

Q. And state whether or not the territory included within the Wickman placer, that is with reference to the Peabody?

A. Well, it went from the north 1300 feet this way (indicating) from the northwest corner stake to the southwest corner stake and went 1300 feet, the same right this way (indicating) and over here to the river at this point (indicating) was where the corner was.

Q. It included the territory marked within the line of the Wickman placer on defendant's exhibit C?

A. Yes, sir.

Q. And did the Wickman placer, that is the Wickman original location included the excluded strip on complainant's exhibit No. 4?

A. Took everything to high water mark on the Columbia River, yes, sir.

Q. State whether or not you know the reason why the strip along the Columbia River was excluded from the patent of the Wickman placer?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as immaterial.

Q. Do you know?

A. Why?

Q. What is the reason?

Mr. AVERY: Same objection.

A. Upon surveying it it was found to contain over 100 acres which is the limit that 5 persons could locate, therefore it had to be cut off on one end or the other, or one side or the other, and it was cut off from there.

Q. Now state if you did any panning—the next panning after this you have testified to?

A. The first that I distinctly remember, can give dates, was in May 1902.

Q. 1902?

A. Yes, sir.

Q. And where did you pan at that time?

A. I began at about the upper end of the Nespelem River and we panned both sides of it up for a ways. I could not now recall just how far, and then we went—

Q. Did you find any gold there?

A. Yes.

Q. Did you find gold there?

A. Yes, sir.

Q. Now go on.

A. We then went on down the Columbia River, after panning up the Nespelem, and at the mouth of the Nespelem, we went down the river, the Columbia River, and panned the gravel on the side of the bank and then—

Q. Referring now to the excluded strip?

A. What is that?

Testimony of F. O. Hudnutt.

Q. Are you referring now to what we call the excluded strip?

A. Well we went down—went down at that time. That was in getting out.

Q. I understand that, but did you pan on the excluded strip?

A. Yes, sir.

Q. Where else?

Mr. AVERY: I object and move to strike out other panning than on the Columbia.

A. Well we panned in some gulches here (indicating)—carried the gravel down to the Columbia River.

Q. Where were those gulches—on the property?

A. They were on the property.

Q. That is on the Wickman and Peabody; or on the Wickman?

A. On both of them we panned.

Q. With what results?

A. Well, we found in nearly all the pans gold—in some cases fine gold, but when we got up further we would get larger pieces.

Q. Were you an officer of the company at this time?

A. In 1902?

Q. Yes, sir.

A. Yes, sir.

Q. Was there any other officer of the company with you at that time?

A. The Secretary, Mr. Peabody, from Michigan.

Q. Now was he there at the time of the panning?

A. Yes, sir, and panned himself.

Testimony of F. O. Hudnutt.

Q. Do you know whether he found gold?

Mr. AVERY: I object to that as not the best evidence.

A. I know that he took some back with him.

Mr. AVERY: I move to strike that.

Q. Just answer my question.

A. Yes, sir, he did.

Q. Did you see him pan gold?

A. Yes, sir.

Q. Will you state, Dr. Hudnutt, whether or not you know the mental attitude of Mr. Peabody, the secretary of the company—

Mr. AVERY: I object to that as immaterial.

Mr. BLAIR: Just one second, Mr. AVERY.

Mr. AVERY: All right.

Q. —with reference to the placer value of this property?

Mr. AVERY: I object to that on the ground that you cannot prove the mental attitude of Mr. Peabody by Dr. Hudnutt. It is incompetent—it is immaterial and not the best evidence.

Q. State yes or no.

A. Yes, sir.

Q. Did you hear any expression of Mr. Peabody at that time?

Mr. AVERY: I object to that as not the best evidence. I do not understand that you can prove mental attitude in this manner.

Mr. BLAIR: I can sometimes show the mental attitude by expressions, etc.

Testimony of F. O. Hudnutt.

Q. Did you hear any expressions of Mr. Peabody at that time?

A. I did.

Q. And what was their character?

Mr. AVERY: I object to that as being incompetent, heresay and immaterial. You cannot prove the statements of the mental attitude of Mr. Peabody by this witness.

A. He was excited over the gold and told me to secure patent as soon as possible on that ground.

Q. Will you state what was your own mental attitude with reference to the placer value of the ground?

Mr. AVERY: I object to that as being incompetent. He can state what he thought, within the rules of evidence, but not his mental attitude, that would be a conclusion.

A. It corroborated my previous opinion.

Q. What was your previous opinion?

A. That this ground was a good placer property.

Q. When you refer to your previous opinion to what do you refer?

Mr. AVERY: I make the same objection?

A. Well, my previous opinion was that it was good ground and the more I prospected the more I was favorably impressed with it?

Q. Have you constantly panned or prospected upon this property; every year since that time?

A. I have.

Q. What did this prospecting cover in point of area on the two placers?

Testimony of F. O. Hudnutt.

A. I was—practically, with the exception of the—

Q. Well you have been at various places on there?

Mr. AVERY: I object to that as leading—I object to your leading the witness.

A. I covered the property as I would regard it.

Q. You have covered the property?

A. Covered the property.

Mr. AVERY: I want to ask if you will permit me—if he said excepting—

A. Yes I can explain that part of it.

Q. Excepting what?

A. Excepting part of the lower end of the Wickman placer.

Q. Which?

A. Excepting part of the lower end of the Wickman placer as it now stands, with the excluded strip cut out.

Mr. AVERY: I object to that as being indefinite.

Mr. BLAIR: I withdraw the question.

Mr. AVERY: It is too general and it is too indefinite to locate any particular part or how and calls for a conclusion.

A. I found good prospects of gold.

Q. By prospects you mean what?

A. Dirt.

Q. By prospects of gold you mean what?

A. Well particles of gold in nearly all of the pans that I panned.

Q. State the character of the gold found there with reference to the size or sizes and varieties?

A. My experience has been from panning it—

Testimony of F. O. Hudnutt.

Q. Now what is it, just answer definitely the question that I asked you.

A. You asked my experience?

Q. No, I did not.

(Question read.)

Mr. AVERY: I want to object to that also on the ground that it don't have reference to any particular time, place or gold.

A. The gold grows coarser as you go up away from the river as a rule.

Q. State whether or not there are more than one kind?

A. Down there near the mouth of the Nespelem and along the mouth of the Columbia River there is some flour gold, but not very much.

Q. Did you find any flake gold there?

A. Fine and heavy flake gold, yes, sir.

Mr. AVERY: Where is that—

Q. Is there any particular part of the property upon which you found flake gold as distinguished from flour gold?

A. Well down near the mouth of the river.

Q. What river?

A. Nespelem River.

Q. What is the character of the gold found along the Nespelem River.

A. It is heavy gold.

Q. Do you know the mineral character of the mineralized character of the country through which the Nespelem River runs?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as immaterial and calling for a conclusion.

Q. Did you at that time?

Mr. AVERY: I object to that as the witness has not shown himself competent to answer.

A. Yes, sir.

Q. What is that—what is the character of the country through which the river runs before it enters this property?

A. Before it enters this property it flows practically through three mineral belts.

Q. What do those belts carry in the way of minerals?

Mr. AVERY: I make the same objection.

A. Gold, silver, copper and lead.

Q. State whether or not that country has quartz locations, quartz mines located in it?

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. Do you know approximately the number of quartz claims tributary to the big Nespelem?

Mr. AVERY: I object to that as immaterial.

A. Yes, sir.

Q. State approximately the number.

Mr. AVERY: I object to that as immaterial and incompetent.

A. There is 81 claims within 3 miles from the recent survey of the placers, north.

Q. State whether or not you know the mineral or non-mineral character of the Columbia River above this property?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as immaterial and incompetent.

A. I did.

Q. What was your knowledge—that it was mineral or non-mineral?

A. Do you refer to—

Q. I just want you to answer the question whether or not it was mineral or non-mineral.

Mr. AVERY: I object to that as incompetent and immaterial.

A. It was a mineral country.

Q. Did you know what kind or what mineral or minerals the Columbia River bore?

Mr. AVERY: I make the same objection.

A. Yes, sir.

Q. What was that?

A. Gold.

Q. State if you know whether there were or were not any placer claims or mines along the Columbia River?

Mr. AVERY: I make the same objection and it is leading.

A. I did.

Q. What with reference to the character, if you know, of the gold that you panned up on these placers?

A. Yes, sir.

Q. Have you it with you.

A. I have a little sample.

Q. What is that?

A. I have a little sample.

Q. Where is it?

Testimony of F. O. Hudnutt.

A. (Witness produces it) I have it with me.

Q. And now, Doctor, will you state the topography of the south bank of the Nespelem River beginning at the mouth of the Nespelem?

A. Beginning at the mouth of the Nespelem on the south side?

Q. Yes, the narrow strip?

A. The bank shows there about 6 feet of gravel in one solid mass. 6 or 8 feet perhaps and I could not sure say, but I believe there was another strip above it. I would not state how wide it was, but it was a gradual rise until about—

Q. A gradual rise as you go up the river, do you mean?

A. Yes, the bank gradually rises and the gravel increases until about perhaps 300 or 400 yards it is about 75 or 80 feet possibly 90 feet high, that is from the water's edge to the top of it. That is practically a solid body of gravel, blue gravel with very little sand.

Q. Keeps 6 feet of gravel back continuing up the river?

A. Well, the bank is perhaps as high as that for 100 yards, and then gradually slopes down, but the gravel continues in the basins and extends back in little bars and embraces from 2 to 6 acres and back of that is the gravel extending out.

Q. How far does the gravel bank extend in point of distance up the river?

A. Well it extends up, on the south side, it extends up above the cabin right on across the creek.

Testimony of F. O. Hudnutt.

Q. Well with reference to the distance from the mouth of the Nespelem River to the falls where is the cabin located?

A. It is about half way I should say that the gravel extends—

Q. That is all I want just now, I think you have answered my question. Now on the north side of the river there beginning with the mouth of the river, state whether or not the gravel appears along the river?

A. The gravel is continuous from the mouth of the Nespelem up for 6 or 8 feet high—I would say it varies from 7 to 8 or 9 feet and then there is a narrow—a sort of a clay dyke I would call it that cuts it off and then the gravel comes in again and that extends up to about the cabin and then diagonally from the cabin northwest.

Q. Have you ever panned this high bank you speak of?

A. Yes, sir.

Q. On the south side?

A. Yes, sir.

Q. Did you find gold there?

A. Yes, sir.

Q. Did you find it at what point on there?

A. I panned from the water's edge about two-thirds of the way up I should judge and it is all gold bearing and carries particles of gold.

Q. Do you mean 2-3 of the way up the hill?

A. Two-thirds of the way up, I didn't go clear to the top.

Q. Up the hill or up the river?

Testimony of F. O. Hudnutt.

A. Up the hill.

Q. Did you ever pan the gravel on the other side of the river?

A. Yes, sir.

Q. With what results?

A. Sir?

Q. You found any gold?

A. Yes, sir.

Q. Have you ever panned the surface of the 2 claims?

A. I have panned some of the holes—you mean the surface of the 2 claims?

Q. I mean just on the surface, that is on the ground, the top of the ground?

A. Well, I panned the top of the ground where there was gravel, yes, sir. I didn't understand exactly what you meant?

Q. Did you ever find any gold?

A. Yes, sir.

Q. Now, Dr. Hudnutt, have you ever had any experience in hydraulic mining.

A. I never have.

Q. Do you know generally the methods adopted in hydraulicking?

Mr. AVERY: I object to that as incompetent and immaterial and not qualified to speak.

A. I have examined a good many hydraulic plants and know the general particulars in that way of hydraulic mining.

Q. Now what are the things required in hydraulic mining?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as the witness says he has not had any experience in hydraulic mining and has not shown himself competent to answer the question as the question is too indefinite in any event.

Q. State the things that are necessary for hydraulicking?

Mr. AVERY: The same objection.

A. The force of the water from the fall of the water.

Q. You need water do you?

A. And the amount of dirt that you can handle and the dump.

Q. Do you know how the water is conveyed in hydraulicking?

A. Sir.

Q. Do you know how the water is conveyed upon the ground in hydraulicking?

Mr. AVERY: I object to that as leading and it is too general and indefinite and he has not had any experience that would qualify him to answer.

Q. You may answer.

A. Pipes and flumes.

Q. Never carried on any diggings?

A. Never did.

Q. Do you know what a giant is?

A. In a general way.

Q. What is a giant?

A. Well it is the iron that is fastened onto the iron pipe, fastened on to the end of it to attach a hose to you may say.

Q. The water flows from the giant, does it?

Testimony of F. O. Hudnutt.

A. Certainly.

Q. Do you know the height of the water available here above the property, approximately—that is the approximate height?

A. I know it possibly approximately, as I would make an estimate.

Q. That is what I want to know. I want you to state about what it is.

A. 225 to 250 feet.

Q. Have you ever been in the various ravines on these two properties?

A. Sir?

Q. Have you ever been in the various ravines on these two properties?

A. I think I have been in all the ravines that cover the property, yes, sir.

Q. State whether or not they show gravel?

A. They do, yes, sir.

Q. Have you ever panned in any of these ravines?

A. I have.

Q. Did you find any gold?

A. Yes, sir.

Q. What was the nature of the gold you found?

A. Up the river it was coarse gold as compared with the flour gold.

Q. Up what river do you mean?

A. Sir?

Q. Up what river—you say “up the river”?

A. I said it was coarse gold as compared with the

Testimony of F. O. Hudnutt.

flour gold on the Columbia River—not up the river on the Columbia River.

Q. I asked you, Doctor, with reference to the ravines. You said you panned in the ravines and had found gold. Have you ever done any panning upon this property since this litigation was started?

A. Any what?

Q. Any panning upon the property since the litigation was started?

A. Yes, sir.

Q. How often?

A. Oh, I could not state definitely.

Q. Well could you state approximately?

A. Well I don't know that I could approximately. I have been there a great many times and every time I went down I panned I think without any fail in panning.

Q. Was that your custom before the litigation?

A. Always had a gold pan—always panned when I went down there.

Q. State whether or not before this litigation started you had entered into any negotiations for the working of the property?

Mr. AVERY: I object to that as immaterial so far as it amounts to anything. If it amounts to anything it would be a self-serving declaration and calls for hearsay evidence.

Q. State yes or no.

A. Yes, sir.

Q. What were these negotiations?

Testimony of F. O. Hudnutt.

Mr. AVERY: I make the same objection, and in addition to it that it is not the best evidence.

A. I was negotiating with a firm in New York City for the purchase of a drill which is used to prospect dredging grounds.

Q. What company was that?

Mr. AVERY: I make the same objection.

A. I think it is the Cyclone, I am not sure, I seen it in the mining papers.

Q. The Cyclone?

A. I think it was the Cyclone drill.

Q. The Cyclone Drill Co., was it?

A. It seems to me—I am not positive as to that.

Q. Where was this firm located?

A. New York City.

Q. What was this drill for?

A. It takes out gravel or sand or even rock I think down to a depth of 50 or 60 or 80 or 100 feet possibly so you can pan and prospect the ground and determine how it yields.

Q. For what purpose were you intending to use this drill?

A. I wanted to prospect all of that ground.

Q. For what purpose?

A. For the purpose of seeing where the richest places were.

Q. Did you buy one of these drills?

A. No, sir. I got a letter from the secretary saying that the suit had been begun and I stopped.

Mr. AVERY: I object to that. I make the same ob-

Testimony of F. O. Hudnutt.

jection to all this that I did in regard to the negotiations—to what the Secretary said.

Q. This communication you received from the secretary caused you to stop operations?

Mr. AVERY: I object to that on the same grounds.

A. To save the money.

Q. Are you acquainted with the position of the power plant, the electric power plant foundation testified to by Mr. Early?

A. Yes, sir.

Q. And Mr. Comerford?

A. Yes, sir.

Q. Do you know the size of that?

A. I don't know except approximately.

Q. State the character of soil, rock or gravel in which that is located.

A. It is in a solid rock.

Q. Is it excavated out of solid rock?

A. Excavated out of solid rock, yes, sir.

Q. Where is that blasted with relation to Improvement Ditch 3 on complainant's exhibit No. 4?

A. Where that excavation is?

Q. As it comes near the Nespelem River—is it above or below the point of seeming contact between that Improvement Ditch and the Nespelem River? I am asking now with reference to that foundation?

A. The foundation is below the contact.

Q. How far below it, do you know?

A. Well I could not say?

Q. Approximately?

Testimony of F. O. Hudnutt.

A. Well, I don't think that it is—I don't think that it is—

Q. I mean in point of distance down the river?

A. You are speaking about the point of contact of the ditch and the river—how much below that?

Q. Yes, sir.

A. Well I should say that it might be from 75 to 100 feet possibly, making a guess at it. I would not be positive, possibly more, and possibly less, I could not say.

Mr. AVERY: I move to strike out the answer as being indefinite and unreliable for the foundation of any conclusion.

Q. It is below the point of contact?

A. Certainly.

Q. Now, Doctor, state whether or not you are familiar with the flume bed that has been testified to by Mr. Early?

A. Yes, sir.

Q. Where is that located with reference to the dam?

A. It extends from the dam to where it breaks off abruptly.

Q. What is the character of the flume bed?

A. It is a solid rock cliff.

Q. Cut out of the solid rock?

A. Yes, sir.

Q. At the time when you located the property and subsequent thereto, up to the present time, state whether or not you have had a belief as to the availability of this property for a placer mining proposition?

Mr. AVERY: I object to that as leading and it is immaterial and incompetent and not the best evidence.

Testimony of F. O. Hudnutt.

A. Certainly I have.

Q. You may answer.

A. I have.

Q. What is that belief?

A. That the ground is a good paying placer proposition.

Q. Will you state the reasons urging you to that opinion?

A. Sir?

Q. Will you state the reasons urging you to that opinion?

A. The continuous prospecting that I have done myself and had done by others shows increased areas of gold bearing gravel that I did not find existing at first, I know a good many and I know this gold existed in practically all of the gravel and it is disseminated throughout the gravel. That is one reason, and I don't believe that there is any other ground that can be worked by the hydraulic method as cheaply as that,—not that I have ever seen; and also from the fact that on the east the Nespelem River for fifteen miles goes through a crystalline formation of rock, mostly through three different mineral belts, and the gulch and the gorge on the west end comes down from a thoroughly mineralized belt in which every square foot of land almost is staked and the drainage from this to the Nespelem would necessarily throw the gold on this bar in addition to the gold that would be deposited by the Columbia River.

Mr. AVERY: I move to strike out all of the statement made because it is incompetent and it is immaterial and

Testimony of F. O. Hudnutt.

if that objection is not good, I move to strike out the part which says that almost every foot of land is staked on the west end on the ground that it is immaterial and incompetent.

A. I did not say the west end.

Mr. AVERY: Well, "every foot of ground is staked" then—leaving out the "west end."

Q. Doctor, I call your attention to this bottle containing what seems to be a black substance and ask you what there is contained therein?

A. Well it is black sand that was taken out of the Peabody placer, with gold in it.

Mr. BLAIR: I ask to have this marked defendant's exhibit F.

Exhibit was so marked.

Q. Was that gold found upon the Peabody?

A. Yes, sir.

Mr. BLAIR: I offer in evidence defendant's exhibit F.

Mr. AVERY: I object to it on the ground that it is incompetent and that there is yet no foundation for admitting it in this case as evidence to prove or disprove any of the issues in this case.

Mr. BLAIR: That is all.

CROSS EXAMINATION.

By Mr. AVERY:

Q. What is your position with the company now?

A. General Manager.

Q. Are you a stockholder?

A. Yes, sir.

Testimony of F. O. Hudnutt.

Q. Have been a stockholder and manager since the organization of the defendant?

A. Yes, sir.

Q. Have you not been the member most active of the Board of officers?

A. I have had to have charge of the property.

Q. What is that?

A. I have had to have charge of all the company's property.

Q. But you have really been the active member of the Board of Trustees?

A. I should say one of the most active.

Q. When were you first organized—to

A. To locate the patent?

Q. When you first located the Peabody the company was not organized at that time?

A. In 1901.

Q. Well was it a fact—I don't know at this time what the date was.

A. The company was simply a prospecting company.

Q. Well, was it organized as a corporation?

A. No, sir, not at that time.

Q. They were the people who were organized—finally organized the defendant company?

A. Yes, sir.

Q. Were they the same people who were in a company or voluntary association or partnership for the purpose of prospecting?

A. Yes, sir.

Testimony of F. O. Hudnutt.

Q. Was it the same company that you had made in 1888 as a prospecting company, that you refer to?

A. Oh no, entirely different people.

Q. Entirely different people?

A. Yes, sir.

Q. How many prospecting associations have you formed?

A. Only those two.

Q. You say you made one in 1888?

A. I did.

Q. You went ahead with these people then, did you?

A. No, sir, none of them.

Q. You said you made a company before that, I believe?

A. No organized company—I made trips.

Q. You said at that time that you had made a prospecting company—you didn't say a corporation—what do you mean by that?

A. I said that we organized a prospecting company in 1888 and organized a prospecting company in 1900.

Q. You said you organized a prospecting company in 1888?

A. Well, that is the one I have stated, in 1898 and in 1900.

Q. I understood you just now to say 1888?

A. I meant 1898 if I said 1888.

Q. Two different times you organized prospecting companies?

A. Yes, sir.

Q. They were entirely different people?

Testimony of F. O. Hudnutt.

A. Yes, sir.

Q. After you located the placer claims or at the time rather of locating the placer claims you didn't organize a corporation?

A. Not the first location of the Peabody placer, not in 1901. It was not organized as a corporation, no, sir.

Q. Was it organized as a corporation at the time you made your second or Wickman location?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Q. The corporation was made I assume for the purpose of working the different mines you discovered?

A. Yes, sir.

Q. These or any others?

A. Yes, sir.

Q. And before that time had you located any quartz claims?

A. In 1900?

Q. Yes, sir.

A. Yes, sir.

Q. Had you already located quartz claims before you located these two placers?

A. Yes, sir.

Q. The corporation, I understand, was made and organized for the purpose of working mining claims?

A. Yes, sir.

Q. Primarily?

A. Yes, sir.

Testimony of F. O. Hudnutt.

Q. You changed your articles of incorporation, didn't you?

A. They were amended.

Q. Giving you the right to transport power and take franchises?

A. Sir?

Q. I am asking you if that is a fact?

A. Sir?

Q. They were amended so as to broaden your scope and power, to take in the organization of power plants, railroad franchises and electric lights?

A. I think so.

Q. That was done after the location of these two claims?

A. I don't remember when they were amended.

Q. You said that you panned the stream?

Mr. BLAIR: Just one second, Mr. Avery, I want to see these articles of incorporation. I want to see whether I want to put in an objection to them. I will put in the objection and move to strike all the testimony with reference to the amended articles of incorporation for the reason that the amended articles themselves are the best evidence.

Mr. AVERY: I quite agree with you that they are the best evidence. They are in there.

Mr. BLAIR: I put in the motion to strike.

Q. You said you panned the stream at Stevenson's bar, did you?

A. Yes, sir.

Q. You mean the Columbia River?

Testimony of F. O. Hudnutt.

A. Yes, sir.

Q. Did you pan at the river or above the river, up the bank?

A. I panned in the little creek which is just above the bank, above the bar.

Q. And what did you say about 10 or 15 acres that had been worked at Stevenson's bar?

A. There had been, I should judge, about 10 or 15 acres that had been worked I was told by Mr. Stevenson, by the Chinese.

Q. That was down on the river?

A. Right on the river.

Q. Right on the bank of the river?

A. Went down abruptly.

Q. That is what they call a sand bar, isn't it?

A. Gravel bar.

Q. Gravel bar?

A. Yes, sir.

Q. Sand in it?

A. Sand in it, yes, sir.

Q. How far is Stevenson's from the mouth of the Nespelem?

A. It is from 5 to 6 miles.

Q. You said you found some colors up above the house in the bank?

A. Yes, sir.

Q. Hadn't been located, had it?

A. Well it was on Mr. Stevenson's cattle ranch.

Q. He was not using it for a mine?

A. No, sir.

Testimony of F. O. Hudnutt.

Q. Using it to range cattle?

A. Well, I was there, stopping there at the time.

Q. That was in his cattle ranch, wasn't it?

A. Yes, sir, was in the cattle ranch, right close to his house.

Q. Did you tell in your direct examination how many colors you found in the pans?

A. I didn't find but one or two colors.

Q. That is what you said in your direct examination?

A. I didn't say how much I found. I said I found gold.

Q. Found gold?

A. If I remember correctly, I did, yes, sir.

Q. When in your examination you answered, when you said that you found gold—that might be that you only found one color?

A. Might possibly be so.

Q. The answer that you found gold from time to time might mean as you have answered—that you only found one color?

A. No, sir.

Q. That is why you said you found gold at this point and now say that you only found one or two colors?

A. Well if I was asked specifically to state whether I found one color or 50 colors or 10 colors or a quantity of them, wherever I could remember it I should state specifically, but I panned a number that I got one color from.

Q. You say you got one color?

A. I think it was one color.

Q. You have now stated that on your direct examina-

Testimony of F. O. Hudnutt.

tion you did not say how many colors you got, but simply stated that you got colors?

A. I stated I got gold.

Q. Is it not a fact that when you stated you got gold in your other answers in this examination that it might have meant you only got one color?

A. It might have meant, is not a proper way to phrase it. The question is what it did mean.

Q. You may answer the question, Doctor.

A. Well when I stated—was asked if I found gold, why I found gold. I didn't state how much or how little—the majority of places I could not state.

Q. No?

A. No.

Q. But you would have answered the question in the affirmative, that is the question whether or not you found gold, you would have answered that in the affirmative if you had only found one color?

A. Yes, if I had found gold whether it was one color or a hundred I should have said the same thing unless I was asked specifically to state, then I would have stated.

Q. You say you first went on the claim in 1900?

A. Yes, sir.

Q. April?

A. Yes, sir.

Q. Am I right in my recollection that you stated that you didn't pan on the claim in 1900. I think you so stated. Am I right about that?

A. I think that I did not pan on the claim in 1900.

Q. When I say claim, I mean the two claims.

Testimony of F. O. Hudnutt.

A. On the bar, yes, sir.

Q. On the bar?

A. Yes, sir.

Q. Now that, however, is the time you told your companions that there was gold there?

A. It was stated that there was gold there.

Q. Then you didn't pan at all?

A. Didn't pan.

Q. You were quite enthusiastic about the gold outlook at that time there—I mean to say there being gold there?

A. Not a particle.

Q. Not a particle?

A. No.

Q. You said you told your companions that there was gold there. You didn't try to demonstrate it by any actual experiments?

A. No, we were passing right through to get up to Nespelem as hurriedly as possible.

Q. And you didn't make any further investigation?

A. No, sir.

Q. And didn't investigate it at all until a year afterwards?

A. Well I was down to look it over in 1900 and it was staked.

Q. Wasn't any one on it, was there?

A. I don't remember whether there was or not. I saw their stakes and got off.

Q. Well where did the stakes run?

A. I would not attempt to tell. There was several

Testimony of F. O. Hudnutt.

stakes there. I could not even say how the claims were located. I saw there was prospectors' stakes and that they had located, simply located it, but I never even knew their names.

Q. You don't know whether it was all located or not?

A. I do not.

Q. Well then why didn't you make an examination or investigation as to the ground that was not located there?

A. Well I was just simply down there to pan and saw those stakes, several of them and I didn't investigate.

Q. What year was that?

A. 1900.

Q. That was in 1900?

A. Yes, sir.

Q. What month?

A. I could not say.

Q. How long after April, approximately, if you can state?

A. In the year 1900?

Q. Definitely?

A. Oh, I could not state positively.

Q. How did you come to be crossing there in 1900 in April?

A. The ferry was down below here about 15 miles and there is a trail part of the way and we have a high water trail—and a low water trail to the falls of the Columbia, a water grade right up and we were crossing here to go to Nespelem.

Q. Now taking this map, complainant's exhibit No. 4,

Testimony of F. O. Hudnutt.

can you indicate about where you passed along there at that time?

A. Well I can only state that it was somewhere where this road or trail goes along here (indicating).

Q. You mean by that that this trail runs as you indicate with your finger approximately northwest from the west end of the Wickman to the east along the Peabody?

A. Yes, approximately.

Q. Is that the high or low water trail?

A. Well I suppose probably that is the high water trail, that is after we get on the bench.

Q. Now where did you see stakes at that time?

A. I didn't see stakes when we crossed the first time.

Q. That is the time you stated there was gold there?

A. We found there was gold there.

Q. Did you stop at all on the claims?

A. No, sir.

Q. Now who did you come back with later on in the year?

A. I cannot recall whether I was alone or whether there was anyone with me.

Q. What did you come back for?

A. Well I was down there looking over the ground, quartz prospecting, to look over the ground and I went down on the placer ground.

Q. And you didn't pan it at all at that time, I think you stated?

A. No, sir, I didn't. I didn't have any pan with me.

Q. You could have gotten a pan, couldn't you?

Testimony of F. O. Hudnutt.

A. I might have gotten it by riding 4 or 5 miles and taking 4 or 5 hours to go over there.

Q. Weren't there any pans at Nespelem?

A. Gold pans?

Q. Yes, sir.

A. Sometimes a gold pan in Nespelem, but there hasn't been one there for five years that I know of, 4 or 5 years.

Q. I thought you were prospecting on there?

A. I said I was prospecting for quartz and went down to the Nespelem bar. I didn't have any gold pan with me at that time.

Q. Where was the pan you used over on the Stevenson bar?

A. We had that in our camp, but I was camped 4 or 5 miles from there.

Q. Didn't you say you went in there to prospect?

A. For placer and quartz, everything.

Q. Well, then why do you say you had to go that far for a pan?

A. I said that the camp, where I was camped was 4 or 5 miles from this place and I was prospecting for quartz and as a rule I didn't take any gold pan with me. I was prospecting right down on the rock point and bluff and went down on the bank of the placer.

Q. You didn't use a pan, as I understand you then, in prospecting for quartz at all?

A. No, sir, no need of carrying it.

Q. Your prospecting trip then was principally for quartz?

Testimony of F. O. Hudnutt.

A. Yes, looking over the country.

Q. Was Mr. Early with you on either trip?

A. I don't think he was, I am not certain, but I don't think he was.

Q. And didn't you go down and stake out these claims?

A. I did not.

Q. And would you mind telling me again, if I have overlooked it, why you were down on these claims afterwards, a few months later, in 1900—I don't recall you stated?

A. I don't remember that I stated I was down on these claims particularly. In June, July or August I think I was down—I am not certain what time it was, whether it was June, July or August; I think it was in the latter part—I think it was in July or August, but I am not certain about it.

Q. That is the last time that you were down there, from the time you were there in 1900?

A. Yes, sir. I could not give the date.

Q. Well I want to know when was it you saw stakes on these claims?

A. It was I think in July or August. I am not certain.

Q. It was the first time you had been down since you passed over it in April 1900?

A. That was I think the first time.

Q. Now what were you doing there in July or August?

Testimony of F. O. Hudnutt.

A. Well I was looking over the country and prospecting.

Q. Prospecting for what?

A. Well—

Q. Placer or quartz?

Mr. BLAIR: I object to that question as it has been answered.

Q. Prospecting for placer and quartz?

A. I was looking over the country prospecting. I cannot remember particularly what my motive was down there, but I was down there on the ground as I say prospecting, whether for quartz or placer it is impossible for me to remember back 8 or 9 years and state specifically what any man is doing or what I had in mind.

Q. You stated when you located this what you had in mind, in your direct examination.

A. That is a different thing. I didn't locate it myself.

Q. Now you don't know whether you were prospecting down there at the time you saw stakes there?

A. That is prospecting for placer or quartz?

Q. For anything?

A. Well I presume that I was prospecting for quartz. I was down there in that country and as I am always prospecting when I am on horseback or on foot in a mineralized region, I was certainly prospecting.

Q. Well then the stakes that you saw on the claim did not have anything to do with your not locating it?

A. I would not locate anything without examining it

Testimony of F. O. Hudnutt.

thoroughly and I would not locate where there were stakes.

Q. I ask you if the fact that there were stakes there influenced you at all about locating?

A. I would not locate where there were stakes, certainly would not.

Q. Did it or not?

A. No one could locate where the ground was—

Q. I ask you an entirely different question. I ask you if the existence of those stakes there influenced you in locating and if you would have located had it not been for the stakes at that time?

Mr. BLAIR: I object to that as it has nothing to do with this investigation. He has not testified that he intended to locate there or had it in his mind to locate at that time.

Q. Now will you answer my last question?

(Question read.)

A. The presence of the stakes would prevent me from locating, but I am not certain that I would have located it if there had been no stakes there.

Q. Did the existence of the stakes there prevent you from prospecting it?

A. I had no pan or anything to prospect with. It was impossible to prospect without a pan.

Q. I asked you if the existence of those stakes there influenced you not to prospect it for placer?

Mr. BLAIR: I object to the question on the ground that it has been answered in the preceding question.

Testimony of F. O. Hudnutt.

Q. No, Doctor, will you answer the question please?
(Question read.)

A. Simply an impossibility to prospect it.

Q. Now, Doctor, you and I both know you are not answering my question.

A. It is just like asking a man if he would take a trip on the cars whether he had money or not.

Mr. AVERY: I didn't ask you if you would take a trip—

A. One would not take a trip on the cars if he didn't have money.

Q. Now I will ask you doctor to answer the question.
(Question read.)

Mr. BLAIR: I object on the ground that the witness has answered the question the only way in which he can answer it according to his testimony.

Mr. AVERY: I object to your intimating to the witness—I object to your saying anything about it.

Mr. BLAIR. I think it is perfectly obvious that you are attempting to get the witness to state a thing—

Mr. AVERY: I am attempting to get the witness to answer the question.

Mr. BLAIR. You can ask a question to a witness and get the witness in a position which is not justified by facts.

(Question read.)

Mr. BLAIR: I object to the question as already having been answered by the witness.

A. The existence of stakes on any ground would nat-

Testimony of F. O. Hudnutt.

urally deter any one from prospecting on the ground because it is supposed to be covered by those stakes.

Q. Well, do you refuse to answer my question?

A. I think I have answered it.

Mr. AVERY: I will ask the examiner to instruct the witness to answer my question unless the examiner thinks that he has already answered it.

Mr. BLAIR: I want to call the examiner's attention to the fact that the witness has testified that he was not there for the purpose of placer mining and had no pan and that he has already answered that in the presence of posts there would deter any one and it seems to me that the testimony shows very clearly that he had no intention of panning, therefore there could be no intent to do an affirmative act or was in any way influenced by the presence of posts. I think the question is limited to that visit.

Mr. AVERY: It has reference to that second time he was down there and said he saw stakes there and inferentially that that fact had its influence.

The EXAMINER: The only power I would have upon the question would be on the objection of Mr. Blair that it was impertinent and immaterial, radically immaterial.

Mr. AVERY: Mr. Examiner I will pass to another question. I see that the rule is if you decide a question in a case like this that contemplates an appeal instanter. That is of course absolutely impossible at this time.

Q. I will ask one more question to relieve you of such embarrassment as I can because I don't see that

Testimony of F. O. Hudnutt.

an appeal instanter could be taken here from the decision which you might render. I will ask one more question. The record shows that the witness will not answer otherwise than he has answered it. For the purpose of preserving whatever rights may be secured by reason of failure to answer the question as propounded, I am not waiving that. I want the examiner to understand that I am not waiving it. Only I am just going ahead with the examination that is all. I cannot get an answer, I will go ahead with the examination. How long were you down there in July or August on the claim in 1900?

A. I could not state.

Q. Well, can you state approximately?

A. No, sir.

Q. Were you there more than that one day?

A. One day?

Q. At the time he says he was down there in July or August in 1900 on the claim. I am not asking how long he was there, he says he cannot tell, but I am asking if he was there more than at one time during one day?

A. More than one time during one day?

Q. Yes, sir.

Mr. BLAIR: Any more than one time during one day?

Mr. AVERY: Well have it so. We will have it so there may be absolutely no misunderstanding about that, what time of day were you there?

A. I was there one time during one day.

Testimony of F. O. Hudnutt.

Q. How long were you there?

A. I could not state.

Q. Who was with you?

A. I don't remember who was with me.

Q. You were on horseback?

A. Horseback, yes, sir.

Q. Where did you come from?

A. I came from the camp.

Q. How far is that?

A. Between 4 and 5 miles up in the hills north and west of there.

Q. North and west?

A. Yes, sir.

Q. Your camp is the quartz camp, isn't it?

A. Yes, sir.

Q. Where you had located a number of them?

A. Yes, sir.

Q. You weren't there again in 1900, were you?

A. I don't have any recollection of it.

Q. When were you next there?

A. In 1901.

Q. What time of year?

A. I cannot state what time of the year I was there excepting I was there soon after the location was made in June, one time. I don't think I was there at any other time, I would not say positively that I was there before that.

Q. You do not recall whether you were but that one time or not?

A. I could not state positively.

Testimony of F. O. Hudnutt.

Q. How long were you there at that time—what part of the day?

A. Well long enough to look over the ground in June—look over the ground.

Q. Does that mean a day or more or less?

A. Well practically, taking into consideration the distance that it takes to go from one place to another, back to our camp. It is a hard two or three hours trip to get up there.

Q. Who was with you then?

A. Mr. Early.

Q. Did you pan any on that time?

A. Panned at the mouth of the Nespelem as I remember it.

Q. Whereabout at the mouth?

A. Both sides I think. I am not positive, but I think both sides.

Q. That was on the Peabody?

A. That was on the Peabody, yes, sir.

Q. Did you get any gold at that time?

A. Yes, sir.

Q. Colors that you call gold; particles of gold?

A. Particles of gold, yes, sir.

Q. Do you remember how many you got?

A. I could not say, no, sir.

Q. They were small particles were they not—the smallest particles?

A. I could not state in regard to them.

Q. You don't remember anything?

A. I could not state. I know we got gold there.

Testimony of F. O. Hudnutt.

That is all I can state. I could not state the size of the particles of gold as regards to that matter.

Q. When did you go down there again?

A. In 1901.

Q. I think you said that was the only time you were down there that year?

A. I don't remember of any other time that I was down there that year. I cannot specifically recall any time, that is after about, some time towards the middle of June, possibly or such a matter.

Q. You say that you made one trip in June, when did you go there the next time, the next year or when?

A. Specifically in May 1902.

Q. Who were with you at that time?

A. Altogether there was—

Q. Who were with you at that time?

A. The Secretary of the company, Mr. D. B. Horton, a mining engineer, from Detroit and Arizona, who lived in Detroit and Mr. Bussey, and I think Mr. Early.

Q. Did you pan any that time?

A. Yes, sir.

Q. Where did you pan that time?

A. Both sides of the Nespelem, below the Nespelem and down the Columbia River and in the gulches and up here, leading up.

Q. Panned both sides of the river and the Columbia, that is right, is it?

A. Yes, sir.

Q. And in the gulches?

A. Yes, sir.

Testimony of F. O. Hudnutt.

Q. What was the result of your panning?

A. We got some very good prospects that day.

Q. You do not attempt at this time to tell the number or character, do you?

A. I remember that there was some prospects, pans that prospected so well as to cause Mr. Peabody to become quite enthusiastic on it.

Q. I don't quite understand—he was the secretary?

A. He was the secretary. He has died since.

Q. I am asking specifically for results. You don't recall what the number of pans were that you took or the amount of colors that you got in the pans?

A. No, just simply remember one pan, that I don't know how many colors was in, that excited Mr. Peabody, that is all I could remember particularly about that, except we panned and found gold.

Q. It was of the same nature as the other, fine?

A. The gold near the Columbia River was of a finer character than that farther up, up the Nespelem.

Q. Well that pan that excited Mr. Peabody, where was that taken from?

A. That was taken just a little ways up the Nespelem on the bar. I think it was on the north side.

Q. On the Peabody claim?

A. It was on the Peabody claim, yes, sir. It was the only claim that was there.

Q. You didn't prospect on the Wickman that trip, did you?

A. The Wickman was not located at that trip.

Testimony of F. O. Hudnutt.

Q. Did you prospect where the Wickman finally was located?

A. Yes, prospected where the original location of the Wickman run to, which was down the river.

Q. Did you dig any holes during that trip?

A. It was all surface prospecting.

Q. All surface prospecting?

A. Yes, sir.

Q. Well you mean by that you prospected on the surface wherever you could scrape up some gravel?

A. Yes, sir. We had no pick, I don't think, just simply shoveled in the gravel in the pan, two or three pans.

Q. Nearest to the water's edge?

A. Well most of them, except the gulches we had to pack the dirt down to the river.

Q. How long were you there at that time?

A. We started in the morning.

Q. On that trip in May 1902?

A. We started in the morning and went down there.

Q. From camp?

A. From our camp, about 4 1-2 or 5 miles probably over the road and we got there perhaps in the neighborhood of ten o'clock and stayed perhaps until 3 or 4, I could not state specifically. We were there practically all day with the exception of going and coming.

Q. You mean by that 4 or 5 hours probably?

A. I presume so.

Q. Now in that first trip there in 1900 did you notice the fall?

Testimony of F. O. Hudnutt.

A. Well I could not say, but I presume I did see them.

Q. You made no examination of them?

A. I don't remember that I was up towards the falls. The falls are a mile from the river and I don't think I was up to the falls.

Q. Did you make an examination of the falls in 1901?

A. In 1901?

Q. Yes, sir.

A. I went down a trail, followed down by the falls, traveling on horseback that was.

Q. Yes, did you examine the falls?

A. Oh, I possibly might have seen the falls, noticed the falls of course because I noticed them in 1900, but as far as making a thorough examination or anything of that sort, I don't remember that I did.

Q. Did you examine the falls in 1902?

A. In 1902, with reference to what?

Q. Well made an examination of them?

A. Why certainly. I was down there a great many times in 1902.

At this point court took a recess until 2 o'clock P. M.
July 21, 1909.

Spokane, Wash., July 21, 1909.

2 o'clock P. M.

Hearing resumed pursuant to adjournment, all parties present.

DR. F. O. HUDNUTT, recalled for further examination.

Testimony of F. O. Hudnutt.

CROSS EXAMINATION (Cont.)

By Mr. AVERY:

Q. What were you doing down there in 1902, Doctor?

A. In 1902 Mr. MacIntyre came out to make a survey of the Peabody placer.

Q. What I ask is what you were doing?

A. I was down there examining.

Q. When you say that you were down there you mean that you were at the camp?

A. I was down there at the camp, I cannot remember places.

Q. But it was 3 or 4 miles from there, that is where you stayed?

A. At the nearest—the falls they are below the camp.

Q. At the camp?

A. On the placer, I stayed at the cabin.

Q. You weren't staying at the placer camp at that time?

A. No, sir, I never have stayed there.

Q. Did you do any panning in 1903?

A. I have panned every year at intervals since 1901.

Q. About the same amount each year?

A. Well I could not state specifically.

Q. Why did you pan each time you went down there, each year?

A. Just the same reason that I break rock on the claims that I am exploiting or mining.

Q. What did you break rock on your mining claims for?

A. I wanted to see how it prospected.

Testimony of F. O. Hudnutt.

Q. That is you broke the rock to examine it?

A. To examine it.

Q. Every year to see whether—

A. Every time I saw it as a rule to see whether it is mineralized.

Q. To see whether it is mineralized?

A. Yes, sir.

Q. To see whether it is—

A. Improving.

Q. To see whether you would get additional assurance as to its value?

A. Yes, sir.

Q. Well then I take it your purpose is to find out whether your judgment originally was all right?

A. To corroborate it.

Q. Corroborate it?

A. Yes, sir.

Q. And you have kept doing that up to the present time on these placer claims?

A. Yes, sir.

Q. You thought during all these years that your original judgment needed corroborating?

A. Not particularly.

Q. Then what did you keep panning on these claims for?

A. Well to find, as I said before, to corroborate my first impression and also to find how extensive the gravel deposits were.

Q. Then you were not absolutely sure at any of these years that it was a paying placer proposition?

Testimony of F. O. Hudnutt.

A. Well it was a proposition that in my impression or belief warranted going ahead along there and developing the same as I would a quartz claim.

Q. But you were not so sure but what you felt it needed further prospecting every year, is that right?

A. My object in prospecting as I stated was to find how extensive the gravel deposits were, I had found enough to warrant me in developing a certain part of it. There was other parts of it that I hadn't prospected to satisfy myself particularly, or entirely, in regard to how rich it was or how poor it was.

Q. Then your statement a few answers ago that you did it particularly to corroborate your original opinion, that was not true then?

A. That I did it particularly—

Q. Yes—to corroborate your opinion as to its value?

A. I stated, if I am not mistaken, that I did this panning to corroborate my previous impression on a certain part of the ground. I hadn't prospected, to that extent that I felt I should.

Q. Well you didn't limit yourself in that question to a certain part of the ground, but mentioned it generally. Now do you want to qualify that answer?

Mr. BLAIR: I object to that as the witness necessarily didn't testify that he panned every square inch of the property.

Q. How much did you pan?

A. I could not say.

Q. You cannot tell all the places that you panned on it?

Testimony of F. O. Hudnutt.

A. I could not tell every place I panned on 260 acres or every 160 acres, no, sir, it would be impossible.

Q. The places that you have already specified as being in the gulches and along the Nespelem River, as you stated, then, are the only places where you now recall specifically that you panned?

A. I do not understand the question.

(Question read.)

A. No, sir.

Q. Where else did you pan?

A. I panned up towards the center and to the southeast part, the southeast section of the Wickman placer.

Q. Well you cannot state any more definitely than that where it was?

A. Well in the gulch that runs into the west, I think, also—I prospected recently and previously.

Q. Well now what part of the claim were you trying to confirm or corroborate your original impression of—what panning was that and where was it done?

A. I referred to the original impression as to whether it was a paying placer or not—my prospecting has principally been done up and down the Nespelem River.

Q. And you prospected there for the purpose of corroborating or confirming your original opinion, did you, year after year?

A. With the additional fact, as I stated, that I wished to see how much more gravel there was that was gold bearing in addition to what I had already prospected.

Q. Well what had you already prospected?

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A. I had prospected the lower portion particularly, that is, more than any other part.

Q. Of what?

A. Well of the Wickman placer in 1902.

Q. Of the Wickman placer?

A. I mean of the Peabody placer in 1902.

Q. Well up and down the river is the lower part of the Peabody placer, is it?

A. Yes, the Peabody placer I meant, down in this direction here (indicating). This is the upper portion (indicating).

Q. How far up towards the falls did you prospect?

A. I prospected up to the falls.

Q. How far?

A. That is the lower falls. I prospected up to the lower falls where the—about, well a short distance below where the ditch is taken out.

Q. How far is that from the end line of the Peabody?

Mr. BLAIR: Which end line?

Q. East?

A. Well I could not state how far because there are several falls that manifestly make it difficult to estimate the distance.

Q. Well how near to the east line of the Peabody did you prospect, approximately?

A. I should say in a guess perhaps 600 feet,—making a guess at it.

Q. Well is that a poor guess?

A. Well I could state from the fact if I had measured it, but I would say it was, approximately.

Testimony of F. O. Hudnutt.

Q. Then I take it from your answer that you didn't prospect—that you didn't prospect in the northern part of the Peabody claim?

A. In the northern part of it?

Q. Yes, sir.

A. What do you mean?

Mr. BLAIR: Do you mean the Panhandle?

Q. Northern part?

A. Northern part—my prospecting has been confined as a rule to where I could get water handily for the reason that you have to pack the dirt over to the river and it is a long ways to pack and my prospecting has been confined to the territory which was reached by carrying the dirt or gravel a reasonable distance.

Q. Well I suppose a reasonable distance, a few rods more or less something like that?

A. A hundred yards or two hundred yards.

Q. From the river?

A. From the river, yes sir.

Q. Away from the Columbia or Nespelem Rivers?

A. Yes, sir, from the Columbia and Nespelem.

Q. Did you say you prospected this excluded strip?

A. I did.

Q. In 1902?

A. Yes, sir.

Q. Along the bank?

A. It was not the excluded strip in 1902 at the time we prospected.

Q. But you know what I mean by the excluded strip, do you?

Testimony of F. O. Hudnutt.

A. It is the piece that is now excluded from the Wickman and we have both been calling it that. I prospected that in 1902 in May.

Q. Did you find any colors in there?

A. I want to make a correction here. I prospected this in May.

Q. On the excluded strip?

A. The excluded strip, yes, sir, but it was not on the Wickman placer. The Wickman placer was not located until June so this ground here was practically—that small piece, I don't think it was included in either one at that time.

Q. I don't care about that Doctor, I want to know if the strip of land is there now just as it was then?

A. Just the same.

Q. I want to know when, if at all you did prospect the excluded strip?

A. I prospected that in 1902, that is, went down the river and panned it.

Q. Did you find any gold in it?

A. Yes, sir.

Q. What is the character of this strip, of the land, topographically?

A. It is practically the same as the other portion of the Wickman placer excepting some sand dunes right at the eastern part that would sort of break down here evidently fallen down.

Q. That is in a pretty good position to mine, isn't it?

A. Sir?

Q. That excluded strip is a very good position?

Testimony of F. O. Hudnutt.

A. Oh, I don't know.

Q. In a pretty good position to mine?

A. Well that broken down section—

Q. What?

A. I don't know whether that would be in a good position to mine or not. This section would be capable of mining all right, I think.

Q. What kind of gold did you find in there?

A. Fine particles of gold.

Q. It was the same particles of gold—the same as you found along the Columbia River?

A. Some of it was flake gold which was light, some flour gold that was heavy and some of it was fine gold.

Q. Were any of the flake golds that were light, any of the pieces of flake gold any larger than a pencil point?

A. Well, I should say there were.

Q. Did you save all you got in there from that strip?

A. I did not.

Q. Did you dig or prospect in improvement shaft No. 2 of the Wickman?

A. The Wickman was not located at that time.

Q. Did you prospect that shaft?

A. Whereabouts is it?

Q. There?

A. I don't recall that I have ever prospected that shaft, no, sir.

Q. Have you any idea why it was put down there?

A. Well I suppose it was put down there with the intention of seeing how far it was down to gravel.

Q. Have you ever been in any of these shafts?

Testimony of F. O. Hudnutt.

A. I think I have been in one or two of them.

Q. Which ones have you been in.

A. I could not say.

Q. Have you ever been in the discovery shafts of the Wickman?

A. I don't think—I would not say so, no, sir.

Q. Were you ever in the discovery shaft of the Pea-body?

A. I don't think that, I would not say, no, sir. I would not say as to that specifically.

Q. And you don't recall of having been in but two of the shafts on the property?

Mr. BLAIR: I object to the question as already having been answered.

Mr. AVERY: I think myself that he has answered that.

A. I don't recall that I said I was in any of those shafts. I am not certain that I said so.

Mr. AVERY: Then I will go a little farther because I understood you to say you didn't recall as having been in but two of the shafts on the property.

A. I don't remember that.

Q. What is the fact, and did you mean to say that you hadn't been in any of them?

A. I said—I don't remember how many in regard to that, but I don't recall of ever being in any of them that I have been to, but I am not positive as to that myself.

Q. You don't recall of having been in any of them except that one?

A. I could not testify as to which ones that I was in

Testimony of F. O. Hudnutt.

and I could not recall the date, fixing it in my mind at that time.

Q. I don't care about the date.

A. I think that I have been in two of the shafts—I think that I have.

Q. But you don't recall which they were?

A. I could not recall which they were.

Q. Why didn't you prospect all of these shafts when you were there seeking to confirm your opinion?

A. All of the shafts?

Q. Yes, sir.

A. On the lower end of the Wickman placer the shafts had scarcely reached gravel. I rode along there prospecting and I looked at the silt and sand. I had no gold pan with me and no way of packing dirt. I always go on horseback and I could decide from former prospecting on the bar that outside of the gravel the colors would be so few and far between as a rule that it would be practically useless.

Q. It would not be of any practical value?

A. They would be of very little practical value because gold sinks, its specific gravity will take it down into the gravel.

Q. And then you never prospected the gravel on the Wickman placer?

A. I prospected the gravel on the Wickman placer, yes, sir.

Q. Where did you do that?

A. Right all along here the gravel shows there con-

Testimony of F. O. Hudnutt.

tinuously there for a long distance, right through here near this point, going down to the mouth.

Q. Now you are running your finger on the last "figure 6" in "686" down to the southwesterly?

A. Yes, sir.

Q. How deep are those ravines?

A. Well there is one there that is perhaps—I don't think it is over 5 or 6 feet deep at the point where I prospected it.

Q. Is that the deepest of any of the ravines?

A. Well as it goes down towards the river all the ravines become deeper. At that point on the level it is perhaps 4 to 6 feet deep.

Q. You don't know of a fact then that in order to get gravel they had to sink their shafts along from 11 to 14 feet?

A. Well there was some of the shafts that I saw that apparently were just cut in the gravel, just kind of a cut into the gravel.

Q. And they were how deep?

A. Well they were dug 10 to 12 feet deep originally, but the sand as a rule at the time when I saw them they were caved in and all the gravel that I could get would be on top, thrown on top and washed.

Q. You made no effort to sink through the gravel down to bedrock on this claim?

A. I didn't have charge of the work. I was away a good deal of the time and after the work was done, etc., we had all that we could do to pay our expenses on the quartz claim and did very little work there.

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Q. You thought it was more profitable to work on the quartz claims than on the placer claims?

A. We had to do our work on the quartz claims and after securing a patent on this we didn't have to do any particular expense, except paying taxes.

Q. Well on the quartz claims you had to do a hundred dollars worth of work on the claim?

A. Yes, sir.

Q. How much work did you have to do on the placers?

A. After they are patented there is no work required.

Q. Didn't have to work either on a quartz claim after it is patented, do you?

A. No, sir, but none of our quartz claims are patented.

Q. Why did you get a patent on this before you got it on the quartz claim?

A. Well every person was trying to get this land, or a good many of them and it was decided by the Secretary of the company and by everyone connected with the property to secure a patent on this before I was adversed and in fact I was threatened with adversing by parties who claimed to own a part of the ground.

Q. What kind of a claim did they have on it?

A. They claimed they owned it, a part of the ground of the Wickman placer.

Q. By reason of what?

A. They claimed that they staked it prior to our staking there.

Q. Well you would not have any trouble in holding the ground if you did the annual assessment work, would you on there?

A. They claimed priority of location on this ground.
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Q. What effect did that have as soon as they went on there claiming priority?

A. Well it had this effect that where there are other parties who are trying to get possession of ground that you own and have been threatening you with adversing your title to it, why the safest way is to secure a patent upon it.

Q. It is the safest way on any proposition if you want to hold the land, is to get a patent, isn't it?

A. Yes, sir.

Q. Who was the party that you stated was threatening to adverse you?

A. Well I think it was Mr. Williams and Bales and Cox.

Q. What is Williams' name, do you know?

A. I don't know his name—his name is Williams.

Q. Where does he live?

A. At present?

Q. Yes.

A. Lives at Nespelem.

Q. What is the other man's name?

A. Mr. Cox is one of the other men.

Q. What is his first name?

A. I don't know.

Q. Where does he live?

A. I don't know.

Q. What is the other man's name?

A. Boles.

Q. Where does he live?

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A. I don't know where he is at present.

Q. Do you know what his other name is. his given name?

A. Elijah, I think.

Q. Do you know where he is?

A. I don't know where he is.

Q. Who was the other man?

A. Well I think those were the only three of them, I said.

Q. And they claimed a quartz location?

A. No, sir, claimed a placer location.

Q. Do you know where that was, on what part of the property?

A. I don't know where they claimed, where their stakes were, but it took in part of the Wickman placer.

Q. Now, you said that your opinion was that the ground was good placer property?

A. Yes, sir.

Q. Now will you state what elements, what facts you based your opinion on?

A. I based my opinion upon the fact that I placer mined in Colorado, in the early '90's and panned and prospected the ground that we were working and the ground that others were working and know about what the profits were from the sluice mining, for one thing. I know how that ground prospected and the character of the gold and practically all about it, for one thing. I prospected the ground in 1884 up above Hunter Creek, at the mouth of Hunter Creek.

Q. Wait just a moment—I want to know not about

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your experience, but I want to know what fact or features in regard to these claims prompted you to think that they were good placer property?

A. Very well, from my experience in panning and prospecting placer ground before and knowing what that ground was and comparing it with this.

Q. What I want to know is from what facts or conditions if anything on these two claims did you think that they were good placer properties?

A. I explained one.

Q. Well you haven't said anything about the claims.

A. I think I can answer it better from prospecting the ground and from the fact that I could bring the water down at about 150 to 250 foot head and have a good dump and therefore they could be worked there very cheaply and easily.

Q. You didn't expect to mine it by panning?

A. No, sir.

Q. There is no other way except hydraulicking that it could be worked, is there?

A. I don't know anything about the ground sluicing or booming, etc., in regard to the possibilities or probabilities of working that ground by those methods. Hydraulicking is the method that I always had in mind. I know something about it.

Q. Well, that was your idea from first to last?

A. Yes, hydraulicking.

Q. You stated about having a good dump. Where did you expect the dump would be?

A. Well as I have seen it, the south part here (indi-

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eating) the dirt would carry down here where there is a large flat that is above the high water mark of the Columbia, all of this on this side, the high gravel bank would be deposited here above the Columbia on a bench of rock.

Q. You are running your finger down the Nespelem River?

A. Well I am speaking about the gravel from some very high gravel banks.

Q. To the south of the Nespelem?

A. Gold bearing.

Q. That is where you say your dump could be deposited?

A. Down here (indicating).

Q. That is now you have your finger about an inch and a half south of corner 6 on the Peabody?

A. That is down here—here is quite a flat of rock and then above high water mark on the Columbia River, all this is covered with rock.

Q. Well you don't know anything about dumping in the Columbia River?

A. Well I don't think I would as I say, I would dump nothing in the Columbia River, but I think that there is—it was better to dump here, but this gravel could be worked over and be dumped right here (indicating).

Q. Then you don't intend to dump it on the claim?

A. No I would not dump it on the Wickman at all.

Q. This land along here south of the Peabody placer, does that land down there belong to anybody or is it government land?

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A. It is an Indian by the name of Condon.

Q. Has that been abandoned?

A. Well I don't know whether it has been abandoned or not. There is no one living there.

Q. I thought you said it didn't belong to anybody?

A. No, I said that this ground down here was fenced by an Indian, that is their fence is against the property here (indicating) and goes up here (indicating). The fence comes up here (indicating)—there is no fence—let's see there is no fence that comes here—goes up here, but there is one that joins our claim here and then follows the fence on up here.

Q. That is the Columbia River bank?

A. Yes, sir.

Q. The Columbia River bank?

A. As I say.

Q. How big a space is that on which you intend to dump down there?

A. Well there is a space there of 5 or 6 acres as far as that is concerned that is rock.

Q. Is that sufficient to take all that you would wash out of the south side of the Nespelem River?

A. 6 acres?

Q. Yes, sir.

A. I think it could all be dumped on there.

Q. How were you going to take it down there?

A. It would be taken down by water, sluicing.

Q. How would you do it?

A. Why the same as any ground is carried by hydraulic process and sluice boxes.

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Q. How high are those cliffs on the south side of the Nespelem?

A. Here (indicating)?

Q. Yes, sir.

A. Up here the cliffs are not high here, the bank of gravel is not high here.

Q. Well you mean on the western part?

A. This is the southern part.

Q. Well the western part of the River Nespelem?

A. This is the western part. I was speaking about this gravel bank along this side (indicating).

Q. The south side of the Nespelem?

A. Yes, sir.

Q. What height are those gravel banks on the south side of the Nespelem River?

A. They vary, beginning down here (indicating).

Q. Beginning down at the mouth of the Nespelem?

A. Beginning down at the mouth of the Nespelem.

Q. All right.

A. There the bank is above high water mark perhaps 15 to 18 possibly 20 feet,—from 10 to 20 feet and it gradually rises, and the bank gradually rises on the south bank.

Q. As it goes east?

A. As it goes east, yes, except at one point.

Q. What point?

A. Well, let's see—possibly 600 to 1,000 feet from the mouth—I could not say absolutely definite about that, it rises up to be I should say from 75 to 100 feet high and that is the highest point.

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Q. And then does it continue along about that last height up to the end of the claims?

A. No, sir. Then it is broken up—broken up and runs back—not so close to the river.

Q. Well how high does it continue up along there?

A. Well there is a flat—there is flats there where it is not over 4 or 5 feet perhaps above the Nespelem River, coming down to the river, brushy flats that has gravel in and then back of them it is perhaps 50 feet, 40 or 50 feet and varies of course nearer the falls.

Q. And what is the average height from the place where it is 65 to 75 or 100 feet?

A. Yes, sir.

Q. What is the average height from there to corner No. 8?

A. Well that is a mile—pretty hard to say. Well say up to half way up to the cabin possibly the average height would possibly be ranging from 30 to 50 feet.

Q. And what is the average height up from the cabin way to the east line of the claim. That is, referring to the south bank of the Nespelem River?

A. Yes—well after you get up above the cabin perhaps a few hundred yards it is high land, very little gravel in it as a rule and the bank of the river is very steep and precipitous.

Q. About how high is the average height up there?

A. Well then, from the eye, speaking from the eye I should assume that it would range from 20 to 100 feet high, it is hard telling.

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Q. Well was your idea that that could all be hydraulicked up there?

A. I don't think it could.

Q. How near to the east end line of the claim could it be hydraulicked?

A. Well I would not be sure how far from the east line, but my impression is that it would begin a few hundred feet above the cabin on the south side.

Q. And go west?

A. No, I would go this way, that is, a few hundred feet above the cabin, this way (indicating).

Q. I am trying to find out how much of the eastern part of river on the claim beginning—did you—is it intended rather to hydraulic mine?

A. Well on the south side I should say that there was 1500 to 1800 feet.

Q. You never figured this out very accurately have you, Doctor?

A. Not that portion of it—not that portion of it because I never done but very little prospecting on that side of the creek.

Q. You didn't, but you bought a placer mine up there?

A. No, sir, I did not.

Q. Where is the bedrock there—along the river, is it below or above the river bottom?

A. Well there is a clay.

Q. When I refer to that—

A. The bedrock, the false bedrock, that comes about—in various places it shows up at about the top of the

Testimony of F. O. Hudnutt.

creek as low water, what we call a clay bedrock, a false bedrock at various places.

Q. Well is that such a bedrock as you would go to to get the gold?

A. Yes, you could, it would hold the gold because it is very hard and very smooth.

A. Well, is that the one that you were going to?

A. Sir?

Q. Is that the one that you expected to go to?

A. Well I don't know how thick it is. It may be from 6 feet—2 or 3 feet thick and it may be thicker. I was speaking of that as in places it shows—

Q. That don't answer my question. I am trying to find out if this is the bedrock that you contemplated going to when you hydraulicked this?

A. Go to that first, yes, sir.

Q. You didn't decide whether you would have to go deeper or not?

A. Hadn't decided in any way there my self, no, sir.

Q. Have you gone through this clay?

A. Never have, never dug any holes there.

Q. You don't know how thick it was, deep it was, or is?

A. I could not state. This bedrock only showed in a few places along there, that is all I have seen.

Q. You say that it showed in a few places. How many places along the creek did it show?

A. Well that I could not answer.

Q. Well what places along the creek did it show?

Testimony of F. O. Hudnutt.

A. I don't remember specifically but one or two places where it shows up.

Q. Where are those one or two places?

A. One place is down to the river about a hundred yards from the cabin.

Q. East or west?

A. This was south and west, practically south—south-west.

Q. Well you mean that this is right opposite the cabin?

A. Yes—a little down the creek from the cabin.

Q. Down the creek a hundred feet and opposite the cabin?

A. Down the creek perhaps a hundred to a hundred and fifty feet and then up.

Q. You know where a point would be opposite the cabin on the creek, don't you?

A. Yes, sir.

Q. Is it a hundred or a hundred and fifty feet west of that?

A. I should say 150 feet approximately, in that neighborhood, west of that.

Q. Now what other point, if you recollect any, is bedrock to be observed on the river?

A. I cannot recall any other specifically.

Q. Then you don't know except at that point how deep the bedrock is?

A. I could not say.

Q. What side of the river is that exposure on?

A. It is on the north side of the river.

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Q. It is not so exposed on the south side?

A. No, sir.

Q. Depth of bedrock has much to do in hydraulic mining, don't it?

A. I presume the depth of bedrock would have something to do with mining, the proportion or amount of rock or gravel that there was above it.

Q. Well taking from the surface, the deeper the bedrock is the more ground or dirt there is above it, isn't that true?

A. The deeper the bedrock, the more ground, certainly, above it, that is a fact.

Q. That is the only place on the two claims where you know the bedrock is,—the place you spoke of being a hundred to 150 feet west of opposite the cabin on the river?

A. Well I only recall specifically that this bedrock—where the bedrock is exposed down below the cabin. It is exposed of course above the cabin, but that is a rock bedrock.

Q. But you know where that goes down under the claim?

A. Sir?

Q. You don't know where the rock bedrock goes?

A. I do not.

Q. That might be down hundreds of feet, might it?

A. I could not say. I do not know.

Q. Did you ever figure about how much material would have to be moved on the south side of the Nespelem River in order to get down to bedrock?

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A. I never figured it for the simple reason that the gravel banks, I considered it pay gravel from the bottom of the surface down to a depth, down to the bed of the Nespelem.

Q. What do you mean by pay gravel there?

A. I mean gravel that can be mined and pay a profit.

Q. Well what—describe what you mean by a profit?

Mr. BLAIR: I object to that. It is perfectly obvious what a profit means.

A. A gravel that can be mined.

Mr. BLAIR: Do you want a definition of profit, Mr. Avery?

Mr. AVERY: I want his definition of it.

A. My definition of pay gravel?

(Question read.)

A. Any proposition is a profit in which the income is greater than the outlay.

Q. Now then, in English, describe any excess over the outlay in those claims that you would consider a profit and would warrant working them.

A. I was speaking of my definition of profit.

Q. All right, we will pass that now, will you answer the other question?

(Question read.)

Mr. BLAIR: I object to the question as not being a question that the witness could thoroughly answer.

A. I would not—

Q. How much would it cost a yard to move the gravel on the south side of the Nespelem River?

A. I could not tell.

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Q. You mean by that that you don't know?

A. I don't know.

Q. Well that would enter to a considerable extent, the cost of moving the gravel, into the amount of profit, wouldn't it?

A. Sir?

Q. I say that would enter into the amount of profit, the amount it would cost to move the gravel on the south side of the river, to move it and work the bank on the south side of the river?

A. Certainly.

Q. You don't know how much it would cost to move it?

A. I could not tell how much it would cost for the reason that I never have done it. I inquired for an estimate of cost from our engineers and they told me, the hydraulic engineers, and they told me regarding the cost of moving gravel situated approximately in, something of the same line.

Q. What is the value of the gravel per cubic yard, if you know, what I ask you is if you know?

A. I don't know as to—I don't know.

Q. You don't know anything about how high it would run, do you, per cubic yard?

A. I have made several tests and while some prospects run richer than others I estimated it, made an estimate and than I had experienced hydraulic engineers give me their figures.

Q. Well I am not talking now anything about hydraulic engineers, but I am asking about the gold in the bank.

Testimony of F. O. Hudnutt.

Do you know how much that runs—I believe you answered that you could not tell how much it run per cubic yard in gold—am I right on that?

A. I have answered that in some places it runs a good deal richer and in some places it runs a good deal poorer.

Q. How did you make your estimation—from pans?

A. Made my estimate—from pans that I panned and assays that I had of the black sand and from comparing it with other placer ground we panned that they told me what it run and what wages the men made per day.

Q. How many pans did you allow to a cubic yard?

A. Well from 130 to 150.

Q. You spoke about black sand. Is the black sand at the bottom of the gravel or top of it?

A. The black sand is disseminated all through the gravel.

Q. What is the specific gravity of black sand, greater or more than ordinary sand—greater or less than ordinary sand?

A. It is greater.

Q. Did you say you consulted hydraulic engineers?

A. I talked with hydraulic engineers, yes, sir.

Q. Where was he?

A. Where was he?

Q. Yes, sir.

A. Well I had one or two that I talked with over on the ground.

Q. What hydraulic engineers did you talk with?

A. I talked with Mr. L. K. Armstrong for one and I talked with others here in Spokane.

Testimony of F. O. Hudnutt.

Q. What parties did you talk with here in Spokane?

A. I could not state—I don't think they were hydraulic engineers, but hydraulic miners, from my knowledge.

Q. Are they here in town now?

A. No, sir.

Q. Then, Mr. Armstrong is the only hydraulic engineer you have talked with about this—consulted?

A. I think that he is the only one that I have talked with in regard to the amount of gold per cubic yard and the amount that it would take to hydraulic—the only hydraulic engineer, but you see I talked with a great many hydraulic miners in regard to the matter.

Q. Well it is a proposition of engineering quite largely in hydraulicking, isn't it?

A. Well in a large property of this kind I should say that it would be.

Q. When did you talk with Mr. Armstrong?

A. I talked with him at various times during the last six or seven years.

Q. When did you first talk with him?

A. I could not state.

Q. When did you talk with him on the ground?

A. Oh perhaps 4 or 5 or 6 weeks ago maybe.

Q. That is the first time he was ever up there?

A. Yes, sir.

Q. And that is the first time that there was any professional consultation, wasn't it?

A. Possibly, I would not say for certain.

Q. And is he the only hydraulic engineer that has been on the ground?

Testimony of F. O. Hudnutt.

A. Oh, no, there has been several on the ground, I think.

Q. I mean at your request?

A. Well—

Q. What is that?

A. There are others who were there, I believe.

Q. Well that is, the only hydraulic engineer that you have had on the ground at your request was Mr. Armstrong about 3 weeks ago?

A. I think so.

Q. Did you tell Mr. Armstrong that you wanted him to testify in this case?

A. Why he went there to examine the property—

Mr. BLAIR: I object to that as not proper cross examination and we will call Mr. Armstrong. It is not proper cross examination of this witness and leading and is a tendency or an attempt to impeach Mr. Armstrong and that you can not do in advance.

Q. Will you answer the question now, Doctor?

(Question read.)

A. Yes, sir.

Q. At the time you took him up on the ground or he was up there?

A. Yes, sir.

Q. How were you going to dispose of the dumpage on the north side?

A. Do the same as we did on this side.

Q. Put it down in the same place?

A. Well, practically the same place, along the bank.

Testimony of F. O. Hudnutt.

Q. Why didn't you get an engineer's report on the proposition of hydraulicking there before 3 weeks ago?

A. Well it costs money to get an engineer over into that country and we didn't have the money to throw away.

Q. You thought then that taking a mining engineer or a hydraulic engineer up there was throwing money away did you?

A. With the amount of information that we had or amount that I had, I had made an approximate estimate as I said before,—while I could not tell exactly what it would run per yard, I had made an estimate and I had talked with others there and got their estimates, but I wanted a further examination and inasmuch as Mr. Armstrong was one of our people, one of our stockholders—

Q. Mr. Armstrong is a stockholder is he?

A. Yes, sir.

Q. Well you were spending money all this time on the quartz group?

A. Yes, sir.

Q. But didn't feel justified in getting an engineer up to look at this?

A. We were spending just as little money as we possibly could for the reason that we needed all the money we could raise and more too to develop our quartz properties, that it is imperative we should spend money on.

Q. It was not imperative that you should get a patent for these claims when you did?

A. I explained the purpose.

Q. It was not imperative, or did you think it was?

Testimony of F. O. Hudnutt.

A. I regarded it as imperative.

Q. That you get a patent then or lose the claims?

A. I expected we would lose it if we didn't get a patent, I have testified to it heretofore, I was advised to by everybody.

Q. Everybody advised you that you would lose the claim if you didn't get a patent pretty promptly, did they?

A. Well I had pretty strong evidence in it from those three parties, that I was liable to lose it or have adverses filed against it if I didn't secure it.

Q. Without repeating it, I am inclined to think that you have stated in my examination of you, referring in one of your answers that the bedrock, the clay bedrock, that you don't know where it exists on the Wickman Peabody other than you stated. I think you have stated that, haven't you?

A. I don't know that I referred to the Wickman placer. I stated where on the Peabody.

Q. If you haven't stated in regard to the Wickman, will you do so now?

A. Well I could not state definitely.

Q. That would be equally true of the Wickman?

A. Might be and might not.

Q. It might be that the bedrock is similar and it might not be?

A. I don't know, I could not say.

Q. You don't know anything about where it is on the Wickman?

A. I could not testify to it, no, sir.

Testimony of F. O. Hudnutt.

Q. There has not been any effort made to take water at the south side of the Nespelem River, has there?

A. On the south side of the Nespelem River?

Q. Yes, sir.

A. No, sir.

Q. By the way, the sluice box was in there at the point about where you said the clay bedrock was exposed?

A. About that point, yes, sir, there was a sluice box there.

Q. How were you going to get the water to wash the south side of the Nespelem River, the bank that you have talked about?

A. Take it from the dam, and the flume coming down the dam and from the ditch below.

Q. Well now what flume do you refer to?

A. I mean the flume bed that is there, the flume bed already blasted out of the rock from the dam.

Q. That was done a year ago last spring or winter?

A. A year ago last winter, yes, sir.

Q. Where was that, on which side of the river?

A. It is on this side.

Q. On the north side?

A. On the north side.

Q. Well and from the ditch below you said, I believe?

A. Yes, sir.

Q. What ditch, do you refer to improvement ditch?

A. The ditch that is marked on the plan.

Q. That is improvement No. 3?

A. That is the only ditch there is there.

Testimony of F. O. Hudnutt.

Q. Runs across the top of the Wickman and part of the Peabody?

A. Yes, sir.

Q. Well how far from this bank that we are talking about is that ditch, you mean this ditch here (indicating)?

A. Yes—how far was this back from here (indicating)?

Q. Yes, sir.

A. You cannot tell here by the number of feet.

Q. Now you are referring to the upper part where you say there is not any gold to wash.

A. Well I know that—you asked me how many feet it was across here?

Q. Yes, you cannot say the approximate distance—you could not approximate the distance between the ditch and the place where you found the most promising gold?

A. You can bring it down to a point about here (indicating).

Q. About here (indicating), you might bring what down?

A. The water down.

Q. Down the ditch?

A. Down above, above this, above the flume, if you wished to bring it by way of the flume right upon the corner around the side of the hill.

Q. I know, but you are making this motion all on one side of the claim?

A. Certainly.

Q. Well then where would you bring the water to wash the south bank south of the river?

Testimony of F. O. Hudnutt.

A. Certainly, bring it around about here (indicating), easily could have water on this side and bring it down here (indicating).

Q. To bring the water to wash the south side of the river you have got to bring the water from this ditch that runs along the north side?

A. That is the proper way to bring it.

Q. How high above the river is this ditch?

A. Above the Nespelem?

Q. Yes, sir.

A. Well the farther the ditch is up towards the falls the higher it is. As you get down further why it is not so high—designate some point.

Q. Well take it on the map, for instance, at the point where the ditch appears to cross the north line of the Peabody placer, how high above the river is that, the Nespelem?

Mr. BLAIR: I object in regard to the Nespelem River as the testimony shows very clearly it varies in height as regards the Peabody placer.

Q. I will take a point practically opposite to that, a point on the river that I have and I will ask you how much higher the point on the map where the water—the north line of the Peabody appears to cross the Peabody?

A. Yes, sir.

Q. Is that the opposite point on the river?

A. Well I should make an estimate that it was,—that there was a fall on from that point to the river here of perhaps a hundred and twenty-five feet, saying the bottom of the river.

Testimony of F. O. Hudnutt.

Q. Is that the point where you would take the water out to wash the east bank or the south bank of the Nespelem?

A. I don't know that I would do that. However, as I have explained I am not a professional hydraulic miner or engineer. I am just simply saying how it could be done as far as my knowledge of hydraulicking is concerned.

Q. Then you never had a definite plan of where you would take the water out of the ditch?

A. From here.

Q. Out of the ditch?

A. Not particularly as to where I would begin work or where I should—I would get that information of a man who knows the business, a practically hydraulicking engineer who made a business of it.

Q. Well I think you told me that was the way this could be done and I am just asking to find out if that is the way?

A. The way it could be done is approximately as I have explained with the ditch, above the ditch which is down here, the main ditch.

Q. Where is that?

A. This ditch here (indicating).

Q. I know, I see you Doctor, but the reporter cannot understand that when you say "here."

Mr. BLAIR: Describe it with reference to the placers specifically.

Mr. BLAIR: I object to that question based upon the

Testimony of F. O. Hudnutt.

assumption that the witness said that he was working from that point.

A. I didn't say I would work it from that point.

Q. Well what point would you work it from?

A. I said that I should leave that as far as working this ground is concerned in the hands of a man who was professionally competent. I would not work it myself at all.

Q. And the company never decided how it would be worked?

A. The company would not decide exactly how this property should be worked except on the advice of proper parties.

Q. Except what?

A. Except upon the advice or management of proper parties, the parties who were conversant with the form of mining.

Q. Do you mean that that has been done?

A. Oh that is only the way it will be done in the future,—I mean that that is the way in which it will be done in the future. We haven't done what I would call practical mining, it has been prospecting.

Q. How long has Mr. Armstrong been a stockholder in your company?

Mr. BLAIR: I object to that as not proper cross examination and arguing the matter and not entered into in chief. I have no objection to the fact at all.

A. I could not state how many years or how long he has been.

Q. Don't you know approximately?

Testimony of F. O. Hudnutt.

A. Well I presume, possibly 4 or 5 years, I do not know.

Q. Why did you put the flume on the north side of the river that you say was blased out of the rock a year ago last winter instead of the south side?

A. On account of the physical condition of that part on the advice of an engineer.

Q. Why did you say physical?

A. On account of its being harder to take the water out, I say almost impossible to take it out on the other side at all,—required a great deal of rock work to take it out on this side.

Q. No trouble to carry it across the river to the south side?

A. Certainly would have to be carried across the river, flumed across.

Q. How?

A. By a flume.

Q. Whereabouts would the flume be put across?

A. Well I have not answered that question. It would depend upon what the man who was in charge decided. I would not testify to it—I could not state in regard to it. I have not decided it now and I would not decide it at all.

Q. Was not the flume put in for the purpose of putting in a power plant down below?

A. That was partially the reason.

Q. Then there were other reasons besides working the saw mill?

A. Got to have water to hydraulic the property.

Q. I know that, but I am asking if there were other

Testimony of F. O. Hudnutt.

reasons for putting the flume in there than running the saw mill and making power?

A. Certainly. You have got to have power to work.

Q. What did you say about working a pipe?

A. I don't quite understand you.

Q. What did you say?

A. I don't remember that I mentioned anything in regard to working pipe.

Q. What is the power that you have to have to hydraulic—what is the power?

A. What is the power that I would require to hydraulic?

Q. Yes, sir.

A. That is we could use that power house or saw mill.

Q. You say it is to have power to hydraulic. What do you mean by that?

A. I mean the fall.

Q. Fall of what?

A. Fall of water, got to have power—I mean you have to have force.

Q. I didn't ask you about that. I asked you about the power house and you said you had to have power to hydraulic, and a pipe.

A. You are speaking about one thing and I was speaking about another. You were speaking about a power house and I thought you meant power for hydraulicking—that is the fall of the water as I understand it.

Q. Well the power house does not assist in hydraulicking, does it?

Testimony of F. O. Hudnutt.

A. Oh just the mill for some lumber and so forth for the flume.

Q. I mean for the practical working of the hydraulic apparatus?

A. I would have to work 24 hours.

Q. How is that?

A. To light the ground.

Q. What is that?

A. By lighting up the ground where the ground is worked.

Q. Then you contemplate running it day and night, do you?

A. I contemplate working the whole business for all there is in it.

Q. And your idea was to make a pretty big plant there?

A. Yes, sir.

Q. You think this is a pretty big proposition?

A. I do.

Q. And there is loads of money in it?

A. I don't know how much loads are?

Q. There is a great deal of profit in it?

A. I think so.

Q. But it has not influenced you to do any improvement on the place except that that has been stated, but to use all of your energy and money in the quartz claims?

A. We have had for several years past, perhaps beginning in 1896 and when we could spare a little money from the treasury we put it into a separate bank and called it the fund for the place—dam fund.

Testimony of F. O. Hudnutt.

Q. Who put in the dam?

A. Mr. Nixon.

Q. The company didn't build the dam?

A. The company paid the money, paid Mr. Nixon for putting it in.

Q. When was that dam put in?

A. In October, I believe, of 1907.

Q. That was after you knew the case was being investigated by the government?

A. No, sir.

Q. You knew when the case was investigated by the government, didn't you?

A. What time was that?

Q. Mr. Collier's visit, when Mr. Collier and Mr. Goodwin were up there and investigated up there?

A. I didn't know that they were contemplating anything more than making a geological examination of the different properties, mining properties and placer properties along the Columbia River. I didn't know anything at all about it when they were there until after they had gone.

Q. Didn't Mr. Bordeaux tell you?

A. He told me after they had been there several days.

Q. It was after that that you built the dam?

A. We built the dam afterwards, yes, sir. I think, I don't remember exactly the date that Mr. Collier was there. It had no influence upon the project at all. We have been getting this money for years for this purpose and that is for this dam.

Q. Did you ever sell any stock in this company?

Testimony of F. O. Hudnutt.

A. What company?

Q. The defendant.

A. The Multnomah Mining Company?

Q. Yes, sir.

A. Yes, sir.

Q. Did you ever mention the fact to the stockholders that there was a good water power up there?

A. Certainly I did.

Q. That it was one of the most valuable assets of the mine?

A. I don't know that I stated it in just that language. I always stated all the properties that we had, in speaking of the water power, I would speak of the water right for working this ground.

Q. Did you state when you were selling the property what it was for, that it could be used outside of the mines for other purposes?

A. I don't remember what I stated in selling stock.

Q. I am not asking you to remember what you said. I am asking you if you didn't so state that the water power could be used and was a valuable asset for use outside of the mining company?

Mr. BLAIR: I object to that on the ground that it is not proper cross examination.

A. Well I could not say.

Q. You don't remember whether you did or not?

A. I don't remember the wording, just exactly, if you would repeat that question once more.

Q. When you were selling any stock, or at any other time, have you repeated or said that the water power on

Testimony of F. O. Hudnutt.

these claims, referring to the falls and the water in the Nespelem River, was a very valuable asset and could be utilized for power and light to be used outside of the claims?

A. I think so, I think I did say so the time Mr. Nixon reported.

Q. In other words you have not been doing it since 1900—October 1907, was it?

A. Mr. Nixon—

Mr. BLAIR: I object to the question and I suggest, Mr. Avery, that you ask it in detail so that the witness can answer. It may be that the answer would be the same, but I think it is fair that the question should be asked in detail.

Mr. AVERY: The question was a very plain one and the witness has not intimated that he did not understand it.

Q. Will you answer the question, Doctor?

A. Speaking of the business of the company, to use in connection with a concentrator.

Q. Well now, that is not an answer to the question. If you cannot answer it now just say so and I will not take any more time on it.

Mr. BLAIR: Just answer Mr. Avery.

Q. What concentrator do you refer to?

A. The intention of the company was to put up a concentrator down on the river and use the power to work it.

Q. Where were you going to put the concentrator on there?

Testimony of F. O. Hudnutt.

A. Well, we had not decided about that. It was something in the future. It was a thing that we thought we could get in time and we thought there was use for a concentrator and we thought it could be used and utilized for our own ores on the river.

Q. That is somewhere on the two claims?

A. Some where on the two claims and power could be utilized for that purpose if there was water enough to supply all the other needs.

Q. That was for a concentrator to concentrate the ore on the quartz claims, was it not?

A. It was for concentrating from the black sand and if we thought necessary for any kind of machinery for working our own properties.

Q. Well you stated in the beginning, in the first place that it was for concentrating ore?

A. Well yes I stated that.

Q. Well now you are talking about black sand.

A. I said it was possible to use it in concentrating black sand also.

Q. Can you concentrate the black sand there?

A. Well I will say this that I tried to keep posted in regard to the different methods of separating gold from the black sand and I have tried to find out if there was not some process, I have been studying and corresponding somewhat, that is, I understand that I have corresponded with parties and then tried to find out by books of people who were mining men in regard to process to utilize the by-products, such as Dr. Day suggest of now.

He suggests that the black sand could be made for in-

Testimony of F. O. Hudnutt.

stance into steel, the black sand from the Columbia River and other by-products that were thrown away could be utilized and become valuable by-products, and I had that in mind also in connection with the concentrator for our ores.

Q. Ores from the quartz mines?

A. Ores from the quartz mines, yes, sir.

Q. Now your idea was to concentrate the black sand and make it into steel?

A. What I meant was that I had in mind the possibilities in the future of utilizing, not only take out the gold, but utilize the black sand and other by-products such as what Dr. Day has found in that region, Zirkon and Mozonite and rare minerals.

Q. They never have consummated an arrangement to make the black sand into steel?

A. They never have, but that is no sign that they will not.

Q. Have you any prospectii of the defendant corporation?

Q. I think that I have one over in my cabin on the claim, but I am not sure, but I think I have.

Q. How long since you have seen one?

A. Prospectii?

Q. Yes, sir.

A. There never was but one prospectus issued by the company and the rest were reports and literature descriptive of the property and this prospectus was issued in the fall of 1901 soon after the organization of the company.

Testimony of F. O. Hudnutt.

Q. How many copies were there made of that?

A. I thing at that time there was 1000 printed or 500, I am not sure. They were printed in Battle Creek, Mich.

Q. Your head office is here, is it not?

A. Yes, sir.

Q. Isn't there one in your office?

A. No, sir. I tried to find one the other day, but I don't think there is over 3 or 4 in existence and I don't know where they are because they have been—the stockholders number about 600 and they have always been writing for literature and you get out in a very short time and only this year—

Q. You recall my asking for a prospectus about the first day of the hearing, don't you?

A. Yes, sir.

Q. And asked you to look for it?

A. Yes, sir.

Q. And you have looked for it?

A. I have. I have looked not only through my own stuff, I have not an office here at the hotel, but I went to the Secretary and told him to look it up and see if he had one, but I don't think that there was but one or two, I don't know how many there may be.

Q. Have you any other printed matter that is available?

A. I have not any with me, no, sir.

Q. Where is it?

A. Sir?

Q. Where is it, at the office here in Spokane?

Testimony of F. O. Hudnutt.

A. I don't know whether there is in the office in Spokane or not.

Q. What do you keep in your office there—books?

Mr. BLAIR: I object to this question on the ground that it is immaterial, if there is something definite that you want to ask for.

Mr. AVERY: I want some literature and printed matter.

Mr. BLAIR: That is just a general fishing expedition and if we can find out what you want.

Mr. AVERY: I am not going to get it evidently.

Q. Was the prospectus based upon anybody's report?

A. No, sir.

Q. Who made it?

A. Who made the prospectus?

Q. Yes, sir.

A. I wrote it myself, that is as I remember I wrote about it—I don't remember of any report being given in it at all. It was when we first organized.

Q. It was reporting the character of the properties and their good points?

A. It stated that we had located properties in Washington.

Q. I am not asking you what details, what it contained, but I am asking you generally if it didn't contain the matter which showed the value of the properties?

A. Just as any prospectus would.

Q. What did you say a giant was?

A. I don't know as I could describe it in technical terms.

Testimony of F. O. Hudnutt.

Q. Well just use common terms.

A. It is I believe an iron pipe attached to the hose.

Q. Well, that word, I think it means a nozzle, don't it?

A. I think so.

Q. That is about it?

A. That is about it.

Q. You stated that you had some negotiations for a drill.

A. I had them give prices, yes, sir.

Q. When was that?

A. It was in February or March—well it was a year ago last spring—it was in February or March 1907.

Q. You said that you ceased negotiations because the secretary wrote you that they were going to have trouble over the claim?

A. Yes, sir.

Q. When did the secretary write you?

A. Well I think it was some time in April. It was about April I think it was in April that I got word from him.

Q. Then you knew that there was going to be some trouble about the claims a considerable time before the suit was brought, did you Doctor?

A. Well I was negotiating at that time, I know it was in the spring, I was negotiating at that time—it may have been in April or May, March or April,—during the time when I was negotiating with those people that I got word from the secretary that the suit had been begun.

Q. Got word at that time that suit had been begun?

Testimony of F. O. Hudnutt.

A. Yes, sir—well it had been begun at that time. It was begun in April.

Q. 1908?

A. 1900 and—why it was—must have been in—it was a year ago last spring that would be—wouldn't it?

Q. What is the character of this drill did you say?

A. Well the character of the drill that I had reference to, I spoke of it as a Cyclone drill, and I think it was an Empire drill. The drill worked by hand power and it went down and took out the gravel so that it could be prospected going down to quite a considerable depth, 80 or 100 or 150 feet I believe, it was used for prospecting ground for dredging and prospecting I guess.

Q. With who did you correspond?

A. Well it was with the secretary I suppose, the secretary of the drill company in New York City, the Empire Drill Company.

Q. The Empire Drill Company?

A. I think it was the Empire Drill Company.

Q. What is the diameter of this drill?

A. I think it was made so you could take out as high a core of gravel to the width of 6 inches, possibly 8, I am not certain about that.

Q. Have you forgotten what kind or size of a drill you were going to get?

A. I think there were various sizes there, that is the pipe, they are possibly from 4 to 8 inches, I could not remember.

Q. You say they worked by hand, that is they are worked by men who drill?

Testimony of F. O. Hudnutt.

A. Yes, sir.

Q. How are they worked or drilled?

A. Well the way I understood it from the conversations, there is a large wheel, laying flat like a wheel and the piece that goes down in the ground and cuts and these men who are there they take hold of the handles and turn it around. I think it is worked by man power, my impression is.

Q. What was your purpose in prospecting up there at that time?

Mr. BLAIR: I object to that as already having been asked and answered.

Q. With this drill I mean?

Mr. BLAIR: I object to the question as having been asked and answered before in this cross examination.

Q. You may answer.

A. I wished to find the richest places on the ground.

Q. This was after Mr. Collier and Mr. Goodwin had been up there?

A. Oh, that is, I don't know the date that Mr. Collier and Mr. Goodwin were there. I never thought anything about it, it never entered into my calculation.

Q. It was afterwards, was it not?

A. Yes, sir.

Mr. BLAIR: When Mr. Avery asks you a question that is susceptible of a direct answer yes or no, answer it and then if there is any explanation to make I will bring it out on cross examination.

By Mr. AVERY:

Q. I believe you stated on direct examination that

Testimony of F. O. Hudnutt.

you never saw a placer mine that could be worked so cheap as this?

A. I said I thought it, in my estimation.

Q. It is a pretty attractive one to work from a prospector's standpoint?

A. It is.

Q. And the expense of working it would be proportionally light?

A. It would.

Q. Doctor, calling your attention to defendant's "F," which is a bottle containing some sand, and I assume colors,—where did you find those?

A. On the Peabody placer.

Q. You did find it, did you?

A. Yes, sir.

Q. Personally?

A. Yes, sir.

Q. When did you get them?

A. I should judge about 4 to 6 weeks ago, maybe 7. I could not state.

Q. Who was with you at that time?

A. Mr. Armstrong and Mr. Gay.

Q. Who is Mr. Gay?

A. A man who was prospecting there on the placers.

Q. Did you get them all yourself or did Mr. Gay and Mr. Armstrong get some of them?

A. Mr. Gay and Mr. Armstrong got some of them.

Q. How long has Mr. Gay been prospecting there?

A. Mr. Gay?

Q. Yes, sir.

Testimony of F. O. Hudnutt.

A. He has been working on the placer proposition for two months and a half.

Q. Working for the company?

A. Yes, sir.

Q. Prospecting it?

A. Yes, sir.

Q. You were not with him all of the time, were you?

A. I was not.

Q. He got some of those in your absence?

A. He did.

Q. Then when you say that you got all of these personally, that is not exactly true?

A. I mean that I got it from others, not that I panned there personally.

Q. You mean that you personally took some of this stuff from Mr. Gay?

A. I personally took some of it from him and personally panned some of it.

Q. And Mr. Gay gave you some of it?

A. He gave me some of it, yes, sir.

Q. This is the result of Mr. Gay's panning for several months?

A. No, sir.

Q. How do you know?

A. Well because from the fact that that was the result of—I don't know, perhaps 2 or 3 days or such a matter.

Q. I mean that about Mr. Gay?

A. Yes, I know.

Q. How do you know when Mr. Gay got it?

Testimony of F. O. Hudnutt.

A. Well he stated about the time he got it.

Q. You instructed Mr. Gay to go up there and pan, didn't you?

A. I told Mr. Gay to go down there and prospect all over, prospect the Wickman and Peabody placers.

Q. But you don't know of your own knowledge whether Mr. Gay got that on the Peabody or Wickman or where he got it do you?

A. He worked on the Wickman and Peabody placers and then I had him prospect some ground that was entirely off the placers to see how it prospected.

Q. I just want to get down to the proposition that you don't know anything about where Mr. Gay got this?

A. I have to take his word for it?

Q. Mr. Gay is not here, is he?

A. No, sir.

Q. Is he still up in Nespelem?

A. I think he is in Nespelem. I don't know. I didn't bring that as indicating anything except a sample of the character of the gold.

Q. That is all?

A. Yes, sir.

Q. A sample of the character—it is not put in then as evidence?

A. Not as evidence of what it will run per cubic yard or anything of that sort, simply is the characteristics of the gold that is found on the Peabody placer.

Q. But it is not put in then as gold that was actually taken from these placers?

Testimony of F. O. Hudnutt.

A. Put in as evidence of gold actually taken from the Peabody placer.

Q. Mr. Gay was up there panning—was Mr. Gay working for you how long?

A. Mr. Gay was down there about 2 1-2 months.

Q. And when did he cease work on the placers?

A. About a month ago.

Q. He was up there when Mr. Comerford was there, wasn't he?

A. He was working the claims, yes, sir.

Q. Well he was representing the company?

A. No, sir.

Mr. BLAIR: I object to that question on the ground that it only calls for a conclusion of the witness when you ask him the capacity in which he was working.

Mr. AVERY: I want to cross examine the witness and you can put in your objection if you want to.

Q. I want to know if Mr. Gay was the representative of the company on the claims there at the time Mr. Comerford was up there?

A. He was not the representative of the company.

Q. He was living on it, wasn't he?

A. Yes, sir.

Q. In the cabin even and working for you at that time?

A. He was working for the company at that time, yes, sir.

Q. Did Mr. Gay tell you what he got on the Wickman claim, that is in prospecting the Wickman placer, that

Testimony of F. O. Hudnutt.

is, in exhibit "F," in prospecting from the Wickman?

A. No, sir.

Mr. BLAIR: I object to that as incompetent.

Q. Did Mr. Gay tell you what he got on the Wickman in the way of gold?

Mr. BLAIR: I object to that as obviously incompetent.

A. On the Wickman placer?

Q. Yes, sir.

A. He told me he found gold on the Wickman placer.

Q. He told you he found gold on the Wickman placer?

A. He did.

Q. During the last two or three months?

A. The last two or three months I think—while he was up there working.

Mr. AVERY: Now I move to strike out the evidence on direct examination in connection with defendant's exhibit "F" and also to strike it out as evidence in this case, an as exhibit, on the ground that it is demonstrated that it is incompetent and has no right or place in evidence, in that it was secured or at least some of it by a person not now in court or before court and it is an assumption that is based on hearsay evidence and testimony.

Mr. BLAIR: I contest the motion for the reason as to part of it, it was found upon the property by this witness and so testified to by him and also for the reason that it was admitted to show the character and kind of the gold found upon the Peabody placer.

Q. It may be Doctor that you have answered this

Testimony of F. O. Hudnutt.

question, but it is the easiest way to get at it even if you have answered it—about where was this foundation for a power house?

A. It was below the dam possibly from 500 to 600 feet.

REDIRECT EXAMINATION.

By Mr. BLAIR:

Q. I call your attention to defendant's exhibit "F"—did you personally find any of the gold contained in the bottle?

Mr. AVERY: I object to that if the court please on the ground that it is not a divisible proposition. There is a little sand and apparently some colors in there and he wants to know if he can specify which—it is physically impossible to specify what part someone else got and what part he got himself.

A. I did some of it.

Mr. BLAIR: I am not asking this to show how much or what, but this might be competent to prove anything that it is sought to prove thereby in this case by the defense.

Mr. AVERY: My objection is particularly true because as he has already stated there is a mixture and no one knows to what extent the mixture goes to Mr. Gay or what extent it goes to the witness.

Q. State the general character of the gold contained therein so far as found by Mr. Gay and so far as found by Mr. Armstrong and so far as found by yourself, the portion of it and the character of it, the gold particles in this?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to that as it is utterly incompetent. I object to it for the same reasons as I have already stated in my last objection.

A. Practically the same.

Mr. AVERY: I make a further objection that the witness is not competent or qualified to answer the question.

Q. Answer the question with reference to the size or general size of the particles found by you and those found by Mr. Gay and those found by Mr. Armstrong and contained in the bottle?

Mr. AVERY: I object to that on the ground that it is physically impossible for the witness to answer the question, he is incompetent, and it is incompetent. He has not shown himself qualified to answer the question. It is not possible for him to answer it and you cannot put in incompetent testimony by mixing it up with something that might possibly be competent when it is disconnected and this is hearsay also.

A. No material difference in the size.

Q. I call your attention, Dr. Hudnutt, with reference to those negotiations that you had with the Cyclone Company or the Empire Company with reference to this drill. I will ask you to state in what year that was?

A. That was in 1907 or 1908.

Q. When was the suit brought?

Mr. AVERY: I object to that.

A. I was in Minneapolis—

Q. Just answer my question Dr. Hudnutt.

A. It was 1908.

Q. How do you know it was 1908?

Testimony of F. O. Hudnutt.

Mr. AVERY: I object to your cross examining him.

Mr. BLAIR: You may show why a person does not recall anything more clearly.

Q. Has the company ever decided as to the details of hydraulicking that proposition?

A. No, sir.

Q. Have you ever determined the way, the general way in which you are going to work it, whether, as between sluicing, panning and hydraulicking?

A. It could not be worked by panning.

Q. Please answer my question, Doctor.

A. Hydraulicking.

Q. Doctor, how far is the town of Nespelem from these bars—from the placers?

A. About 3 1-2 miles or 4 miles perhaps.

Q. How far from the bars, from the quartz mining camp?

Mr. AVERY: That has been answered 6 times at least.

A. It is in the neighborhood of 5 miles from Squaw Hump Mountain where most of the claims are situated.

Q. Doctor, with reference to the gold that is found, that you have testified you found, was that visible to the naked eye?

Mr. AVERY: I object to that as having been covered and I don't know what gold he refers to either.

Q. Well, the gold, generally, found upon the property.

Mr. AVERY: I object to that as too indefinite. The

Testimony of F. O. Hudnutt.

witness has mentioned lots of gold that he cannot recollect anything about. It is incompetent.

A. The most of the gold was visible to the naked eye.

Q. You stated I think in cross examination that there was one pan that particularly excited Mr. Peabody?

Mr. AVERY: He stated that in his direct examination.

Q. Will you state whether or not there was other pans found at the time that pan was?

A. Yes, sir.

Q. Did those pans contain gold?

A. I don't understand.

Q. Did those pans show gold?

A. Yes, sir.

Q. Did Mr. Peabody see those other pans?

A. Did he see them?

Q. Yes.

A. Yes, sir.

Mr. AVERY: I object to that as a repetition and indefinite.

Mr. BLAIR: Not necessarily.

Q. Now on cross examination you were asked with reference to the amended articles of incorporation. Will you state the reason why those articles were amended?

A. Because they were not specific and did not give us any latitude to work outside of our own country, that is what the attorney said.

Q. Do you know Doctor whether or not there is any bedrock or bedrock clay along the Columbia River on the Wickman?

Testimony of F. O. Hudnutt.

A. I could not state.

Q. That is I mean on the excluded strip?

A. I could not state.

Q. Do you know the expenses of the building of the flume?

A. Sir?

Q. Do you know the expenses in connection with the flume bed?

Mr. AVERY: I object to that as immaterial.

A. About \$1,000.00—\$900.00 to \$1,000.00.

Mr. BLAIR: I think that is all, Mr. Avery. I forgot to ask this witness with reference to certain facts about certain pictures that I introduced in his direct testimony and I would like to ask—I will introduce them during the testimony of Mr. Armstrong and I reserve the right to call Dr. Hudnutt in corroboration of the fact that these pictures were taken and under what circumstances they were taken.

Defendant's exhibits G, H, I and J marked.

By Mr. BLAIR: I call your attention to defendant's exhibit "G" and ask you if you know what it is?

A. The head gate and dam here to this rock flume blasted out of the side of this rock.

Q. Did you see that picture taken?

A. This one?

Q. Yes, sir.

A. I took it myself I think—either I or Mr. Armstrong—we were together.

Q. Is that a good representation?

Testimony of F. O. Hudnutt.

A. Very good representation—very good representation.

Mr. BLAIR: I offer in evidence defendant's exhibit "G".

Q. I call your attention to defendant's exhibit "H" and ask you what it is?

A. That is practically the same, showing the dam.

Q. That is another view of the same?

A. That is another view, yes sir.

Mr. BLAIR: I offer defendant's exhibit "H" in evidence.

Q. Is that a fair representation?

A. A fair representation, yes, sir.

Q. I call your attention to defendant's exhibit "I" Doctor and ask you to state what that is?

A. That is the same as the others, taken from a different point, the same view.

Q. A picture of what?

A. That falls and head gate and rock flume, bed of the flume.

Q. What does this represent at the base of the picture?

A. Rock—broken rock.

Q. What is the nature of the soil there?

A. There is no soil there.

Q. What is the nature of the bed of the flume there?

A. It is rock. It is an altered granite formation.

Mr. BLAIR: I offer in evidence defendant's exhibit "I" showing the dam and the head gate and the flume bed.

Testimony of F. O. Hudnutt.

Q. At what distance was that picture taken do you know?

A. I think we stood practically in the flume bed perhaps 200 or 300 feet, when we took that.

Q. I call your attention to defendant's exhibit "J" and ask you what that is?

A. A picture of the upper and lower falls, the place that we thought there to divert the water for the ditch. I will make this with an X right there.

Q. Can you state specifically with reference to the picture where you drilled there?

A. On the ravine side here, about 50 feet if I recollect rightly.

Q. Indicate with reference to—there upon the picture, there is water—where the water flows between this rock and soil—where was it you drilled there, was it at the point down here?

A. We drilled up there where this white shows,—the water, it went this side first (indicating).

Q. With reference to the point marked on defendant's exhibit "J" state whether or not the water from the stream above flows around behind that rock?

A. It does not now. That is the reason this was blasted out.

Q. You blasted that out?

A. Yes, we had it blasted out.

Mr. BLAIR: I offer defendant's exhibit "J" in evidence.

Q. I call your attention to complainant's exhibit 5 and I will ask you to state whether or not the same rock

Testimony of F. O. Hudnutt.

does not appear in this picture as appears in defendant's exhibit "J"?

A. It does.

Q. And whether the water flowing to the left of the rock as you look at it is not the stream caused by the excavation described above?

A. It is.

Mr. AVERY: It is evident from the picture. I don't think you need to go into that.

Mr. BLAIR: I just wanted to make that clear.

RECROSS EXAMINATION.

By Mr. AVERY:

Q. What did you say the articles of incorporation were not specific in, the old articles?

A. They were not specific in the opinion of our attorney—

Q. Mr. Blair?

A. Oh no.

Q. In what respect?

A. That they didn't specify what we could do and didn't let us enjoy the privilege of prospecting and mining so as to make it—

Q. What couldn't you do that you wanted to do under your old articles?

A. I would have to leave that to Mr. Murphy who drew the amended articles of incorporation. I am not an attorney and I don't know. I would not give my opinion. It was simply under his instructions and the others.

Testimony of F. O. Hudnutt.

Q. Well you must have had some idea what change was going to be made, didn't you?

A. Not until I talked with him and read over the articles of incorporation and he said that they were defective in a great many instances and should be amended and he drew that up.

Q. To give you more power in what direction?

A. Well he said we ought to have the privilege of mining or prospecting all over the world and that we ought to have it specified he said—I think he said, I am not positive, I think he said, that in articles of incorporation a company could do only the things which were specified—unless they were specified, that we could not do them.

Mr. AVERY: I move to strike that out as not being responsive. Wherein they were restricted and the limitations were onerous.

Mr. BLAIR: I resist the motion upon the grounds I already have stated.

Mr. AVERY: I am not asking whether these are legal or what a corporation could do, but wherein they were not proper in your estimation?

A. I can only repeat as I did before that he said they were not.

Q. And the only thing that you recall was that they did not give you an opportunity to do mining all over the world. That is the specific thing that you recall?

A. He said as I repeated before that a corporation could only do the things which were specified in the articles of incorporation.

Testimony of F. O. Hudnutt.

Q. And the only thing he mentioned was as you say, to have your ability to do business broadened?

A. I remember his saying that as one thing.

Q. But you don't remember any other specific thing?

A. Nothing only what I stated before.

Q. Now you say you have spent \$900 to \$1,000 on a flume bed?

A. Yes, sir.

Q. Does that show on any of the pictures that you have put in evidence here just now?

A. Just part of it.

Q. Taking this defendant's exhibit "I," and we are looking towards the dam, with an apparent cut there which appears to be on the left of the picture?

A. Yes, sir.

Q. And on the left of the dam looking at it?

A. Yes, sir.

Q. Coming towards the water from that cut there is what appears to be a sort of a bed?

A. Yes, sir.

Q. Might be a road bed like?

A. Yes, sir.

Q. Is that the flume bed?

A. That is part of the flume bed.

Q. That is what it is, is it?

A. Yes, sir.

Q. And that is the work that you say cost from \$900.00 to \$1,000.00?

A. That is part of the work, the blasting here projected out (indicating).

Testimony of F. O. Hudnutt.

Q. You mean that, I take it, that being a part of it, it extends further towards us or south?

A. Yes, south.

Q. That is the general character of it, as it runs south?

A. After it was blasted out, that is the general character of it, yes, sir.

Q. What is that—what would the bottom of it or the surface of that, the bed of the road bed be, is it all rock?

A. Rock.

Q. That is dirt up near to us there?

A. There is no dirt on any part of the road bed, practically no dirt at all.

Q. What is it?

A. Basaltic rock and altered granite.

Q. What is that?

A. Granite which has been altered by heat and pressure.

Q. Disintegrated?

A. Not disintegrated, no, sir.

Q. How many feet are there of that flume bed?

A. 331 feet.

Q. Looking at the picture, how far away from the flume bed is that cut. I cannot tell by looking at the picture.

A. Well, it is pretty hard to tell. I could not tell.

Q. How far south of the dam is the head gate. The head gate appears to be between us and the dam as we look at the picture?

A. The head gate is at this side to the north end of the dam (indicating).

Testimony of F. O. Hudnutt.

Q. It is right in the dam?

A. Yes, sir.

Q. That is the dam (indicating)?

A. Yes, sir.

Q. That is what I could not see from the picture?

A. Yes, sir.

Q. This black square which we call the head gate on exhibit "I" is a part of the dam as it were?

A. Part of the dam, yes, sir.

Q. How far is the flume bed at the furthest point from the dam above the Nespelem River opposite to that point?

A. How far does the flume bed extend out?

Q. I think you said it was 300 feet?

A. 331 feet.

Q. You take at 331 feet, how high above the bed of the Nespelem River is that—and when I say above the bed of the river I mean the river that is opposite to it.

A. Yes, sir.

Q. Yes.

A. Well it is quite a good many feet. I could not just say how many feet, it is a good many feet.

Q. Well could you estimate it?

A. I would say from the south end of the flume bed to the bottom of the Nespelem River that it was over a hundred feet, I might be wrong, but I would say it was over 100 feet, might be 75 to 100.

Q. How much lower is the 331st foot of this flume bed than the bottom of the bed where it commences up at the head gate?

Testimony of F. O. Hudnutt.

A. Where it commences at the head gate?

Q. What I mean is what fall is there?

A. I don't think that it is over 3 or 4 or 5 feet—about 6 or 8 feet.

Q. How much below this flume bed is the ditch that is marked "Improvement No. 3" on the Peabody?

A. From the south end of the flume bed?

Q. Well all along the flume bed—does the flume bed go as far as the east end of the ditch?

A. No, sir.

Q. It does not?

A. No, sir.

Q. How much lower is the ditch, the improvement ditch, at its end, than the flume bed at its end where they approach each other?

A. I presume it is 50 to 60 feet possibly.

Q. Now how far from the south end of the flume bed is the power house?

A. Site?

Q. Power foundation, I will put it.

A. I presume over—in the neighborhood of 250 feet possibly.

Q. In what direction?

A. Right along south or following the creek.

Q. The flume bed—than the power foundation, we will call it the foundation.

A. Yes, sir.

Q. The power foundation then is about 200 feet south of the end of the flume bed and on a line with it approximately?

Testimony of F. O. Hudnutt.

A. I think it is over 200 feet.

Q. Over 200 feet and in line with it, is it?

A. Yes, sir.

Q. What is the difference between the two levels, that is the level of the foundation and the level of the south end of the flume bed?

A. The level of the foundation, what is the difference in height?

Q. Yes, sir.

A. It is higher.

Q. How much higher is the flume bed than the south end of the flume, higher than the power foundation?

A. I think from 120 to 140 or 150 feet.

At this point the hearing was adjourned until 11:00 o'clock A. M., July 22, 1909.

Spokane, Wash., July 21, 1909.

11 o'clock A. M.

Hearing resumed pursuant to adjournment, all parties being present.

Dr. F. O. HUDNUTT, recalled for further examination.

CROSS EXAMINATION.

By Mr. AVERY:

Q. Now Doctor, I was trying when we left off yesterday to get as much information as I could about the topography of this claim on the Panhandle or east part?

A. Yes, sir. That would be where the west end—wouldn't it, the way this lies east and west it would be the west end really of the flume bed?

Q. Yes.

Testimony of F. O. Hudnutt.

A. West, the river flows pretty near east and west, that is, this is where the west end of the flume bed (indicating).

Q. I mean the west end of the flume bed, and was there any difference between the east end of the flume bed and the power house foundation here—how far apart?

A. From the west end of the flume bed, from the power foundation?

Q. Yes.

A. I should say in the neighborhood of 250 feet.

Q. Well now, Doctor, wouldn't that be a fine irrigation proposition, for irrigating the placers?

A. I don't know anything about irrigation. I don't know anything about irrigation one way or the other.

Q. Didn't you have in mind irrigation as one of the reasons why you took up these claims?

A. No, sir.

Q. You did not?

A. I did not.

Q. You have not had since?

A. No, sir.

Q. Does not seem to you it was an irrigation proposition?

A. I don't know anything about irrigation. I am a mining man, miner and prospector.

Q. It has not been your idea to use it for an irrigation project?

A. No, sir.

Q. And irrigation plant?

Testimony of F. O. Hudnutt.

A. No, sir.

Q. Or proposition?

A. No, sir. I don't know anything about irrigation, never considered it.

Q. You said down here near corner 6 of the Peabody was the place where you intended or thought of putting a dump?

Q. Was this corner 6 (indicating)?

Q. Yes, sir.

A. Yes, sir, on this ground here. This is a gravel bank here.

Q. Well is there a boat landing there, anywheres along there?

A. There is no boat landing there excepting that boats can land anywhere from 6 miles below I should judge, below here up to here.

Q. This was where you mean—

A. A boat can land at any point as far as my recollection of the geography of the country is concerned anywhere below and up to the mouth of the Nespelem.

Q. Well is it a recognized landing place there?

A. A boat has been up—a boat from Wenatchee, I think from Wenatchee has been up and taken one or two shipments of ore and I think they landed down below the mouth of the Nespelem River, I don't remember just exactly where.

Q. On your land?

A. Not on our land.

Q. On the company's land?

Testimony of F. O. Hudnutt.

A. Not on the company's land, no, sir, I don't think so.

Q. What is your opinion as to the water, these water falls up here and the power that is on the Panhandle of the Peabody, don't you think that this is—did you have in mind the generation of power and the distribution of power from that when you located it?

A. Up to the time that Mr. Nixon reported I thought that we could have power enough there to utilize it possibly part of it, in addition to working out property here to work our drills, that is, our drills in our mines.

Q. In your quartz claims?

A. In our quartz claims which are situated up here, two groups, one about possibly 3 miles the other about 5 miles.

Q. When did Mr. Nixon make his report?

A. In 1906 and also 1907.

Q. But you hadn't intended at any time to use the power there for any other except your own purposes?

A. I could not say only as we had water enough to water for our own purposes. I could not tell how much water there was there. I am not an expert on it.

Q. I mean just your purposes.

A. I was speaking about our own property, as to the use of it on our own properties.

Q. Didn't expect to use it for selling to other people?

A. Could not tell anything about it, in regard to it because I could tell nothing about how much power we would have.

Testimony of F. O. Hudnutt.

Q. You know whether you intended to sell power or not and develop it for any other parties?

A. I thought that after we had got through with our own quartz claims, if there was some power afterwards, we should use it—that might be used up in here.

Q. It didn't interest you at all in taking up the property?

A. No sir.

Q. You say your claims are slightly west and north?

A. North and west, yes sir.

Q. Well what is the land, the character of the land off through the north and east?

A. That is practically mineralized land.

Q. It is what you would term farming land?

A. Oh no.

Q. Any land sure acceptable for irrigation?

A. There is not a square foot of it that I know of. Well I don't know anything about irrigation, but it is solid rock practically.

Q. That is fine grazing land?

A. Very little grazing land, there would be some little gulches or something of that sort, but practically all mountains.

Q. What is this country opposite these claims on the other side of the Columbia?

A. Well it is high land country.

Q. Back from the river?

A. Basaltic rock—well I never have been over the country opposite here, but for as far as you can see

Testimony of F. O. Hudnutt.

there is just what you would call scab land, basaltic rock.

Q. You don't know of any lands over here that are available by irrigation?

A. I don't know whether there are any or not. There might be. I couldn't tell. I have never been over that.

Q. You had no idea of, when you located—when you located and patented these claims you had no idea of using the power there for a saw mill for other purposes or corporations?

A. Not that I know about it, not sir.

Q. And have not since?

A. No.

Q. What is that?

A. I have not since excepting that I thought possibly I could use this saw mill down here for lumber for ourselves and in fact I hadn't given it any consideration. I think it will require all the power we have there for hydraulicking and for the mill and for our necessary uses here and if we put in a concentrator as we have talked about for several years, why that takes power and if we light the grounds to run double shift, 24 hours, it take practically all the water.

Q. Then at no time heretofore has it been your intention to utilize it except for your own company's purposes?

A. For our own company's benefit.

Q. Solely?

A. Yes, sir.

Q. Isn't it a fact that these features about water

Testimony of F. O. Hudnutt.

power to be sold and the fact that there is a sort of a landing on he claim and the ability to irrigate influenced you in locating, patenting and holding these claims?

Mr. BLAIR: I don't want to make any objections there, but with the suggestion that you ask with reference to those things independently, Mr. Avery. It may be that one could be answered one way and the other another.

Mr. AVERY: I object to the interruption.

Mr. BLAIR: I have not interrupted.

A. That fact that boats hadn't come up the Columbia River at that time, but that boats might come up some time and that we could ship ores and concentrates from our property entered into the considerations that we had in locating on there, yes, sir.

Q. But that was the only thing that I have mentioned.

A. That was the idea, yes, sir.

Q. That was taken into consideration?

A. Yes, sir.

Q. And the only one that has been taken into consideration is the one in reference to transportation out?

A. That entered into consideration, yes, sir.

Q. Then your sole reason for locating, patenting and holding these two placer claims is because you think they can be profitably worked for gold?

A. Yes, sir.

Q. (Showing paper) I call your attention to a pamphlet which has a picture of the Nespelem Falls

Testimony of F. O. Hudnutt.

and which is labeled or entitled on the front page, "The Five Profits," and ask you if that was issued by the company?

A. No, sir, it was not.

Q. Who was it issued by?

A. It was issued by myself.

Q. By yourself?

A. By myself, yes, sir.

Q. Well how do you mean by that, Doctor?

A. Well it was published by myself.

Q. Is that a prospectus that you refer to?

A. No, sir.

Q. That was a publication by yourself?

A. Yes, sir.

Q. What position did you occupy at the time you published it?

A. I was general manager.

Q. And when was that issued, do you recall now?

A. It was issued in 1907 or '08.

Q. How many of these did you get out?

A. I don't know.

Q. Can you tell approximately?

A. Perhaps two or three or four thousand.

Q. It was mailed to the stockholders?

A. To the stockholders.

Q. And those other than stockholders?

A. Yes, sir.

(Pamphlet marked complainant's exhibit No. 10.

Mr. AVERY: I offer this in evidence.

Mr. BLAIR: No objection.

Testimony of F. O. Hudnutt.

Q. Who mailed it to the stockholders, Doctor?

A. I did.

Q. From the company's officer here in Spokane?

A. No, sir, in Minneapolis.

Q. Has the company offices in Minneapolis?

A. No, there was no office there. I was simply selling stock.

Q. I call your attention to what is labeled on the outside page "Annual Report of Nespelem Mining, Milling & Development Company," and ask you to look at it and ask you if that was issued by the company or yourself?

A. This was a company map.

Q. What is that?

A. This is a company map.

Q. No—

A. That was issued by the company.

Q. It was, like the last exhibit, mailed to the stockholders?

A. It was, like the last exhibit.

Q. What is that?

A. Like the last exhibit, mailed to the stockholders.

Q. Mailed to the stockholders?

A. Yes, sir.

Q. And those other than stockholders, I suppose?

A. Yes, sir.

Q. For the purpose of exploiting the property?

A. Yes, sir.

Q. And so also was the preceding exhibit I have just put in?

